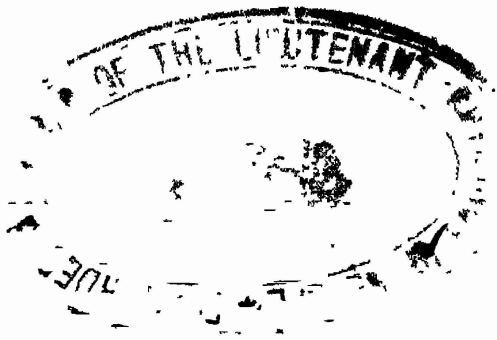

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ABWABS—*Regulation VIII. of* 1793, *ss.* 54, 55, *and* 61—*Land Tenure.*] Abwabs which have been paid according to long-standing custom cannot be recovered unless they were payable at the time of the permanent settlement, and have been consolidated with the rent under sect. 54 of Regulation VIII. of 1793. Sect. 61 prevents their being so recovered unless consolidated, while sect. 55 renders new abwabs illegal. TILUCKDARI SINGH *v.* CHULHAN MAHTON xvi. 152

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ACCRETION—*Submerged Lands—Identity of Reformed Land.*] Where land which has been submerged re-forms and is identified as having formed part (even by accretion) of a particular estate, the owner of that estate is entitled to it. *Lopez* v. *Muddun Mohun Thakoor* (13 Moore's Ind. App. Ca. 467) approved. HUSSAHAI SINGH *v.* SYUD LOOTF ALI KHAN - - - ii. 28

2. —— *Accretion by gradual Accession—Change in the Course of the River—Regulation XI. of* 1825, *ss.* 2, 4, *cl.* 1—*Usage as to Boundary Line.*] The lands in suit (in *Tirhoot*) were settled under Regulation XI. of 1825, s. 4, cl. 1, with the Plaintiff's predecessor in 1837, as the proprietors of an estate to which the lands had become an accretion by gradual accession, and the Plaintiffs continued in possession thereof till the expiration of the settlement in 1847, which

ACCRETION—*continued.*

was made on the same principle. Prior to the renewal of that settlement in 1857, the river, which was to the south of the Plaintiff's zemindary (in *Tirhoot*) and to the north of the Defendant's (in *Sarun*), had suddenly and so completely changed its course that the lands in suit, which were formerly on the north side of the river, were capable of being identified on the south side of it, and were notwithstanding summarily settled with the Defendant, who obtained possession of them:—

Held, that in the absence of proof of usage within the meaning of sect. 2 of the Regulation, that the river should be not merely the boundary between the two districts of *Tirhoot* and *Sarun*, but also the boundary between the two zemindars, the Plaintiffs were entitled to the lands. RUGHOOBUR DYAL SAHOG *v.* MAHARAJAH KISHEN PERTAB SAHEE - - - - vi. 211

3. —— *Assessment of Rent of Accreted Lands—Kabulyat—Act VIII. of* 1869 (*B. C.*) *s.* 14.] Where a kabulyat stipulated that on the accretion to a certain howla of any new cultivable chur, a fresh measurement should be made of the chur and howla, and that excess rent should be paid for the excess land at a stipulated rate up to five drones, and at pergunnah rates for the residue; in default thereof rent to be realized according to law, or service made on the tenants of a notice "requiring them to take a settlement of the excess land and to file a kabulyat, and fixing the time at fifteen days," otherwise the excess land to be settled with others;—the kabulyatdar measured the howla and accreted chur without notice to the tenants and in their absence, then served on the tenants a notice thereof, and of the increased rent demanded, requiring them to appear within fifteen days and file a kabulyat for the said amount of land and rent, or that he would take khas possession.

In a suit, amongst other things, for assessment

ACCRETION—*continued.*

of rent of the excess land :—*Held* (1.) that sect. 14 of Act VIII. of 1869 (B. C.) did not apply.—(2.) That the tenants were not bound by the measurement made by the kabulyatdar in their absence.—(3.) That the kabulyatdar was entitled to a decree fixing the extent of the excess land, and assessing the rent payable for it; and thereafter entitled to issue a fresh notice to the tenants to come to a settlement in respect thereof, or give up possession. RAMCOOMAI GHOSI *v.* KALI KRISHNA TAGORE - - - - - - xiii. 116

4. —— *Act IX. of* 1847—*Lands "gained from the River or Sea by Alluvion or Dereliction"—Land re-formed on the site of a permanently Settled Estate—Jurisdiction of Civil Court.*] Although by the legislation prior to 1847 it was intended to bring under assessment lands not included in the permanent settlement, whether they were waste or gained by alluvion or dereliction, yet all such lands as were comprised in permanently settled estates were to be rigorously excluded from further assessment. Lands so comprised which had become covered with water and afterwards re-formed were not lands "gained from the river or sea by alluvion or dereliction" within the meaning of the said legislation, which was confined to lands so gained "since the period of the settlement."

The intention and effect of Act IX. of 1847 were merely to change the mode of assessment, not to extend in any way the liability to assessment, so as to include in such liability land re-formed on the site of a permanently settled estate, the revenue of which had been paid without abatement since the permanent settlement :—*Held*, further, that where the Board of Revenue has subjected land included in the permanent settlement to an additional assessment, purporting to act therein under Act IX. of 1847, the Civil Court has jurisdiction to review such decision and to declare the act of the Board *ultrà vires*. SECRETARY OF STATE FOR INDIA *v.* SRIMATI FAHIMIDUNNISSA BEGUM - - xvii. 40

5. —— *Land Reformed after Diluviation—Regulation XI. of* 1825—*Islands Act XIV. of* 1859, *s.* 15—*Limitation—Possession under Act IV. of* 1840—*Prescription.*] In a suit brought on the 11th of March, 1872, to recover certain plots of land (1), as re-formations after diluviation of lands which had belonged to the Plaintiffs and as accretions thereto, (2), under a title by prescription; it appeared that the lands had formed in the bed of a river in 1859, and that the Plaintiffs took possession thereof as of re-formed lands and had been maintained in possession under Act IV. awards, but that in 1868 they were ousted by the Collector, who assessed the same under Regulation XI. of 1825, and settled the same with his co-Defendants :—

Held, that whether or not in consequence of Act IX. of 1847 the Government were entitled to assess the lands, they were entitled to oust the Plaintiffs and to take possession of the lands as lands which had originally formed as an island, and were at their first formation surrounded by water which was not fordable :—

Held, further, that sect. 15, Act XIV. of 1859, barred the Plaintiffs' title to recover simply on the strength of their previous possession, without entering into the question of title; the suit not having been brought within six months of dispossession :—*Held*, further, that possession for three years under an order of a magistrate in a proceeding under Act IV. of 1840 does not create a title by prescription. WISE *v.* AMEERUNNISSA KHATOON. WISE *v.* COLLECTOR OF BACKERGUNGE [vii. 73

6. —— *As to Identity of Re-formed Land—Presumption—Possession.*] Upon an issue whether certain chur land was a re-formation on the Plaintiffs' land or on the Defendants', evidence was given tending to prove possession thereof by the Plaintiffs for a considerable period prior to the ouster by the Defendants.—The first Court found this issue of identity in favour of the Plaintiffs; the second held that the Plaintiffs had shewn a title by adverse possession; the High Court remanded the case for a decision by the second Court on the issue of identity.—On remand the second Court affirmed the finding of the first. In special appeal the High Court held there was no evidence on which such finding could be arrived at, on the ground that evidence of subsequent possession was not receivable as evidence of previous identity :—*Held*, that this was error, possession being established for a period of years, *presumitur retro*. ANANGAMANJARI CHOWDHRANI *v.* TRIPURA SOONDARI CHOWDHRANI - - - - - xiv. 101

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See LIMITATION. 21.

—— —— s. 27, art. 34 - - - vii. 240
See LIMITATION. 22.

—— —— arts. 65, 139 - - - xii. 12
See LIMITATION. 23.

—— —— art. 93 - - - viii. 197
See LIMITATION. 24.

—— —— art. 118 - - - - xi. 59
See EXECUTION OF DECREE. 7.

—— —— art. 124 - - - - x. 150
See DECLARATORY DECREE. 6.

—— —— art 129 - - - vi. 110
See LIMITATION. 25.

—— —— —— - - - - xiii. 84
See HINDU LAW. 13; and LIMITATION. 26.

—— —— art. 144 - - - viii. 210
See LIMITATION. 27.

II. ACTS OF THE LEGISLATURE—ACTS OF THE GOVERNOR-GENERAL IN COUNCIL—*continued.*

—— Act XXIII. of 1871 iv. 119; viii. 77; ix. 8
See PENSIONS ACT OF 1871.

—— Act I. of 1872 (Indian Evidence Act, 1872), s. 32 - - xii. 183; xix. 157
See EVIDENCE. 4, 7.

—— —— ss. 35, 18 - - - vii. 63
See EVIDENCE. 3.

—— —— ss. 65, 74, 76 - - - xiv. 71
See EVIDENCE. 5.

—— —— s. 83 - - - - xvii. 145
See EVIDENCE. 6.

—— —— s. 115 - - - - x. 119
See REGISTRATION. 3.

—— —— —— - - - - xix. 203
See ESTOPPEL. 4.

—— Act IX. of 1872 (The Indian Contract Act, 1872) - - - - xviii. 121
See COMMON CARRIER.

—— —— s. 65 - - - - xv. 211
See LIMITATION. 32.

—— Act XVII. of 1873 - - x. 39; xix. 95
See NAWAB NAZIM DEBTS ACT, 1873.

—— Act XVII. of 1875 (Burma Courts Act, 1875), s. 4 - - - xi. 109
See BUDDHIST LAW OF MARRIAGE.

—— Act VI. of 1876 (Chutia Nagpur Encumbered Estates Act, 1876) - xvi. 221
See RATIFICATION. 2.

—— Act XVIII. of 1876 (Oudh Laws Act, 1876)
See MAHOMEDAN LAW. 10. [xx. 144

—— Act I. of 1877 (Specific Relief Act), s. 31 [xiv. 18
See SPECIFIC PERFORMANCE. 1.

—— —— s. 42 - - - xvii. 187
See DECLARATORY DECREE. 7.

—— Act III. of 1877 (Indian Registration Act, 1877), s. 17 - - - xvi. 53
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—— —— s. 17, cl. (*b*) and (*h*) - xvi. 233
See REGISTRATION. 8.

—— —— s. 49 - - - - xii. 150
See REGISTRATION. 9.

—— Act X. of 1877 (Code of Civil Procedure), s. 7 - - - - xvii. 150
See EXECUTION OF DECREE. 10.

—— —— —— - - - - xii. 16
See ESTOPPEL. 3.

—— —— —— - - - - xii. 188
See GHATWALI TENURES. 3.

—— —— —— ix. 197; xii. 23; xv. 106, 159; xvi. 107
See RES JUDICATA. 5, 8, 12, 15, 17.

—— —— s. 25 - - - - xiii. 134
See TRANSFER OF SUIT.

—— —— ss. 42, 43 - - - xviii. 165
See RES JUDICATA. 18.

—— —— ss. 102, 103 - - - xv. 156
See RES JUDICATA. 14.

—— —— ss. 209, 266 - - - xvii. 201
See MAHOMEDAN LAW. 6.

II. ACTS OF THE LEGISLATURE—ACTS OF THE GOVERNOR-GENERAL IN COUNCIL—*continued.*

—— Act X. of 1877 (Code of Civil Procedure), s. 244 - - - - viii. 165
See APPEALS. 3.

—— —— s. 246 - - - - xiii. 106
See EXECUTION SALES. 16.

—— —— s. 266 - - - xvii. 201
See EXECUTION OF DECREE. 11.

—— —— ss. 280, 283 - - xv. 123
See LIMITATION. 30.

—— —— s. 311 - - - - x. 25
See EXECUTION SALES. 6.

—— —— s. 485 - - - viii. 165
See APPEALS. 3.

—— —— s. 540 - - - xiv. 160
See APPEALS. 5.

—— —— s. 547 - - - - xvii. 1
See PRACTICE. 47.

—— —— s. 549 - - - - xvii. 9
See PRACTICE. 48.

—— —— ss. 549, 556, 557, 558 - xiii. 57
See PRACTICE. 46.

—— —— s. 566 - - - - xii. 166
See DECREE. 7.

—— —— s. 588, cl. R. & J. - - viii. 165
See APPEALS. 3.

—— —— ss. 588, 610 - - - x. 4
See EXECUTION OF DECREE. 6.

—— —— s. 602 - - - - xi. 7
See PRACTICE. 45.

—— —— s. 622 - - xi. 237; xvi. 104
See APPEALS. 1, 2.

—— Act XV. of 1877 (Indian Limitation Act, 1877), s. 10 - - - xii. 120
See LIMITATION. 29.

—— —— art. 9 - - - - xv. 211
See LIMITATION. 32.

—— —— art. 11 - - - - xv. 123
See LIMITATION. 30.

—— —— arts. 49, 120, 123 - - xx. 155
See LIMITATION. 35.

—— —— art. 91 - - - xiv. 148
See LIMITATION. 31.

—— —— art. 97 - - - xviii. 158
See LIMITATION. 33.

—— —— art. 109 - - - - xi. 88
See LIMITATION. 34.

—— —— art. 127 - - - xii. 112
See LIMITATION 36.

—— —— art. 132 - - - xiv. 137
See LIMITATION. 37.

—— —— art. 135 - - - xvi. 85
See LIMITATION. 38.

—— —— art. 140 and s. 19 - - xiv. 168
See LIMITATION. 39.

—— —— arts. 141, 142 - - xx. 183
See LIMITATION. 40.

—— —— art. 142 - - - xvi. 23
See LIMITATION. 41.

—— —— arts. 142 and 144 - - xvi. 3
See LIMITATION. 43.

—— —— art. 144 - - - xii. 188
See GHATWALI TENURES. 3.

II. ACTS OF THE LEGISLATURE—ACTS OF THE GOVERNOR-GENERAL IN COUNCIL—*continued.*

—— Act XV. of 1877 (Indian Limitation Act, 1877), s. 10, art. 144 - - xiii. 160
See BENAMEE TRANSACTIONS. 1.

—— —— —— - - - xiii. 147
See LIMITATION. 42.

—— —— art. 180 - - - xvi. 156
See INSOLVENCY. 2.

—— Act XII. of 1879, s. 92 - - xi. 237
See APPEALS. 1.

—— Act XVIII. of 1879 (Legal Practitioners' Act, 1879), s. 13 - - xvii. 199
See LEGAL PRACTITIONERS. 3.

—— —— ss. 14, 40 - - - xiv. 154
See LEGAL PRACTITIONERS. 2.

—— Act IV. of 1882 (Transfer of Property Act, 1882), s. 43 - - - xix. 221
See ESTOPPEL. 5.

—— Act XIV. of 1882 (Code of Civil Procedure), s. 13 - xv. 186; xvi. 107; xix. 234
See RES JUDICATA. 16, 17, 19.

—— —— ss. 13, 525 - - - xviii. 73
See ARBITRATION. 3.

—— —— s. 43 - - - xviii. 158
See LIMITATION. 33.

—— —— —— - - - - xx. 155
See LIMITATION. 35.

—— —— s. 53 - - - - xv. 119
See PRACTICE. 27.

—— —— s. 244 - - - xix. 166
See EXECUTION SALES. 14.

—— —— s. 266 (*g*) - - - xvii. 181
See EXECUTION OF DECREE. 9.

—— —— ss. 289, 290, 311 - - xx. 176
See EXECUTION SALES. 11.

—— —— s. 311 - - - - xv. 171
See EXECUTION SALES. 15.

—— —— ss. 311, 313, 622 - - xix. 154
See EXECUTION SALES. 13.

—— —— s. 435 - - - - xx. 139
See PLAINT.

—— —— ss. 508, 514, 521 - - xviii. 55
See ARBITRATION. 4.

—— —— ss. 584, 585 - xvi. 125; xvii. 122; [xix. 228; xvi. 233
See APPEALS. 6, 7, 8, 11.

—— —— s. 595 - - - - xviii. 6
See PRACTICE. 8.

III. ACTS OF THE LEGISLATURE—ACTS OF THE LOCAL LEGISLATURES.

—— Bengal Act VIII. of 1869 (Landlord and Tenant Procedure Act, 1869), s. 14
See ACCRETION. 3. [xiii. 116

—— —— s. 29 - - - - ix. 82
See LIMITATION. 2.

—— —— ss. 31, 46 - - - xx. 25
See ENHANCEMENT. 3.

—— —— ss. 59, 60, 66 - - - vi. 47
See EXECUTION SALES. 4.

—— Bengal Act VII. of 1880 (Public Demands Recovery Act) - - - xx. 70
See SALE FOR ARREARS OF REVENUE. 4.

III. ACTS OF THE LEGISLATURE—ACTS OF THE LOCAL LEGISLATURES—*continued.*

—— Madras Act VIII. of 1865, s. 3 - vi. 170
See REGISTRATION. 1.

—— Bombay Act VII. of 1863 - - xx. 50
See INAMDARS. 2.

And see REGULATIONS.

ACTS OF STATE—*Resumption by Government of Lands, Arms and Stores—Resumption under colour of a Legal Title—Jurisdiction of Civil Courts.*] Begum *S.* being a jaghiredar holding lands upon a jaidad tenure, and exercising within her jaghire a sort of sovereignty delegated from *Scindia*, agreed to hold the same "as long as she may live" as a jaidadar under the Company, to which *Scindia's* sovereignty was ceded on the 30th of December, 1803. During her lifetime the operation of British law and the jurisdiction of British Courts were excluded from her territories; after her death Regulation Law was introduced therein by order of the Governor-General authorized by Act XVII. of 1836. On her death, but before the introduction of the Regulation Law, the Government, acting in the political department, resumed the lands so held as aforesaid, and seized the arms and stores appertaining to the tenure.

In a suit by the representatives of *D. S.* claiming under the Begum's deed or will to recover possession of the said lands, and to hold them free from assessment to Government revenue:—

Held, that the resumption was not an act of state. It was not the seizure by arbitrary power of territories which up to that time had belonged to another Sovereign State; it was the resumption, under colour of a legal title, of lands previously held from the Government by a subject under a particular tenure, upon the alleged determination of that tenure. The validity of that title to resume is *primâ facie* cognizable by the Municipal Courts of *India.—Secretary of State for India* v. *Kamachee Boye Sahiba* (7 Moore's Ind. Ap. Ca. 476) distinguished.

Held, further, upon the evidence, that the Plaintiffs had not established their title to the lands, as alleged. But it appearing that the arms and stores were purchased by the Begum, and that there was nothing to disprove her title to the things so purchased, *held*, that the Plaintiffs were entitled to recover the value thereof, with interest. FORESTER *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL - - - Supp. 10

2. —— *Confiscation of King of Delhi's Revenues and Territories—Jurisdiction of Civil Courts —Indian Councils Act*, 1861, *c.* 67 — *Circular Order No.* 112 *in Punjaub.*] The status of the King of *Delhi* was that of a king and not a mere jaidadar. The seizure and confiscation in 1857 of the revenues and territories granted to him in 1804 were acts of state, not done under colour of any legal right of which a municipal Court could take cognizance.—*Forester* v. *Secretary of State of India* (Supp. 10) distinguished

Held, also, that the King's ownership of such revenues and territories, according to the true meaning and intent of the grant in 1804, involved no power of disposition, and that all charges and incumbrances created by him out of his estate

ACTS OF STATE—*continued.*
fell with the estate itself, and could not be enforced either at his death or deposition.—Circular Order, No. 112, issued by the Judicial Commissioner of the *Punjaub* as to the liability of the Government for the debts of rebels whose estates had been confiscated, is not a law within the meaning of 24 & 25 Vict. c. 67.—*Lalla Narain Doss* v. *The Estate of the ex-King of Delhi* (11 Moore's Ind App Ca. 277) commented upon. RAJAH SALIG RAM *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL - - - Supp. 119

3. —— *Seizure of Lands by Crown—Right of Conquest—Jurisdiction of Civil Court.*] Where an estate is seized by the Crown by its right of conquest, and not by virtue of any legal title, such seizure must be regarded as an act of state and is not liable to be questioned in a municipal Court.—*Secretary of State for India in Council* v. *Kamachee Boy Sahiba* (7 Moore's Ind. App. Ca. 476) followed. SIRDAR BHAGWAN SINGH *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL [ii. 38

ADMISSIBILITY - - - i. 209
See EVIDENCE. 2.

ADMISSIBILITY OF REGISTERED DOCUMENT
See REGISTRATION. 5. [iv. 166

ADMISSIBILITY OF UNREGISTERED DOCUMENT - - - vi. 170
See REGISTRATION. 1.

ADMISSION BY DEFENDANT - - x. 74
See DECREE. 5.

ADMISSION IN PLEADINGS - xi. 186
See ISSUES. 3.

ADMISSION TO PRACTICE IN THE PRIVY COUNCIL - - - xvi. 163
See LEGAL PRACTITIONERS. 1.

ADOPTED SON iii. 253; vi. 196; viii. 229; [x. 138; xvi. 53
See HINDU LAW. 107, 3, 10, 9, 12.

ADOPTED SON BORN AFTER DEATH OF COLLATERAL - - - xii. 137
See HINDU LAW. 4.

ADOPTED SON'S RIGHTS MODIFIED BY AGREEMENT AT TIME OF ADOPTION
See HINDU LAW. 24. [xix. 108

ADOPTION.
See HINDU LAW. 1—26.

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See HINDU LAW. 52.

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See DECLARATORY DECREE. 2.

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See OUDH LAW. 25.

ADOPTION AFTER DEATH OF COLLATERAL
See HINDU LAW. 11. [xii. 137

ADOPTION BY HINDU MOTHER AFTER SON'S DEATH - - - - iv. 1
See HINDU LAW. 15.

ADOPTION BY KANCHAN CUSTOMS xx. 193
See MAHOMEDAN LAW. 7.

ADOPTION BY WIDOW AFTER ESTATE DIVESTED - - xiv. 61; xvi. 166
See HINDU LAW. 18, 21.

ADOPTION BY WIDOW WITHOUT AUTHORITY
See JAIN LAW. 2. [v. 87

ADOPTION OF DISTANT RELATION v. 40
See HINDU LAW. 5.

ADOPTION OF ONLY SON - - xv. 176
See HINDU LAW. 19.

ADOPTION OF SISTER'S SON - xvi. 186
See HINDU LAW. 94.

ADULTERINE BASTARD - - xi. 31
See MAHOMEDAN LAW. 14.

ADVERSE POSSESSION—*Possession by Collector—Collector's Payment of Rent to adverse Claimant.*] A collector in the possession of land for the purpose of protecting the Government revenue is bound to pay the surplus proceeds of the estate to the real owner, and his possession does not become adverse to the real owner by reason of paying such proceeds to an adverse claimant. RAO KARAN SINGH *v.* RAJA BAKAR ALI KHAN [ix. 99

—— - - - - - - xii. 188
See GHATWALI TENURES. 3.

——
See Cases under LIMITATION. 18, 27, 28, 38, 39, 42, 43.

—— - - - - - - i. 9
See HINDU LAW. 67.

AGENT.
See PRINCIPAL AND AGENT.

AGENTS' ACTS WITHIN SCOPE OF HIS DUTY
See DAMAGES. 1. [v. 130

AGREEMENT.
See CONTRACT.

AGREEMENT AT ADOPTION IN DEROGATION OF ADOPTED SON'S RIGHTS vi. 196
See HINDU LAW. 3.

AGREEMENT BETWEEN ADOPTING WIDOWS
See HINDU LAW. 24. [xix. 108

AGREEMENT BETWEEN ADOPTIVE MOTHER AND NATURAL FATHER xvi. 53
See HINDU LAW. 12.

AGREEMENT BY AGENT UNDER DURESS
See CONTRACT. 3. [iii. 61

AGREEMENT FOR COMMISSION ON NET PROFITS - - - Supp. 86
See PARTNERSHIP.

AGREEMENT FOR THE PURPOSE OF SPOIL OR LITIGATION - - i. 241
See CHAMPERTY. 1.

AGREEMENT OF PARTNERSHIP - iii. 200
See CONTRACT. 2.

AGREEMENT OF PERPETUAL TENANCY
See CONTRACT. 5. [xvi. 6

AGREEMENT IN RESTRAINT OF ADOPTION
See HINDU LAW. 6. [xiii. 97

AGREEMENT REVOCABLE ITS DURATION NOT HAVING BEEN FIXED vii. 83
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AGREEMENT TO ACQUIRE AN INTEREST IN BONA FIDE LITIGATION - i. 241
See CHAMPERTY. 1.

AGREEMENT TO PARTITION - - i. 55
See HINDU LAW. 68.

AGREEMENT TO SIGN KABULYAT - xvi. 233
See REGISTRATION. 8.

AGREEMENT TO SUPPLY FUNDS FOR LITIGATION - - - iv. 23
See CHAMPERTY. 2.

AHMEDABAD TALUKDAR ACT (VI. of 1862), s. 12 - - - - xiv. 89
See GUARDIAN. 4.

ALIENATION - - - -
See HINDU LAW. 27—31.

—— - - - - -
See MAHOMEDAN LAW. 1—6.

—— - - - - - xv. 18
See GHATWALI TENURES. 4.

ALIENATION BY CO-PARCENER OF HIS SHARE - - xx. 116; vii. 18
See HINDU LAW. 35, 36.

ALIENATION BY FATHER OF ANCESTRAL ESTATE - - - i. 321
See HINDU LAW. 40.

ALIENATION BY FATHER OF HIS UNDIVIDED SHARE - - - - i. 321
See HINDU LAW. 40.

ALIENATION OF ATTACHED PROPERTY
See ATTACHMENT. [vii. 157

—— - - - - - viii. 65
See EXECUTION SALES. 5.

ALIENATION OF PROPERTY, PRINCIPLES AFFECTING - - - Supp. 47
See HINDU LAW. 31.

AMBIGUITY - - - - ix. 64
See ESTOPPEL. 1.

AMOUNT OF MAINTENANCE - - v. 55
See HINDU LAW. 62.

AMOUNT OF SEARCH FOR ORIGINAL xix. 79
See PRACTICE. 26.

ANCIENT LIGHTS - - - Supp. 175
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ANGIKAR PATRA - - - xii. 72
See HINDU LAW. 7.

ANNULMENT OF SALE - - xvii. 57
See SALES FOR ARREARS OF REVENUE. 3.

APPEAL - - - - - - xi. 181
See EXECUTION OF DECREE. 8.

APPEAL FROM EX PARTE JUDGMENT v. 233
See APPEALS. 4.

APPEAL LIMITED BY TERMS OF SPECIAL LEAVE - - - - v. 87
See PRACTICE. 11.

APPEAL TO THE COMMISSIONER FROM DECISION OF MANAGER - v. 197
See OUDH LAW. 29.

APPEALABLE AMOUNT - - i. 317
See PRACTICE. 2.

APPEALABLE ORDER - - viii 165
See APPEALS. 3.

APPEALS —*Powers of Appeal Courts—Act X. of* 1877, *s.* 622; *Act XII. of* 1879, *s.* 92.] Where the judges of the lower Courts have jurisdiction to decide a question and decide it, no appeal lying from such decision, the Judicial Commissioner has no power under sect. 622 of Act X. of 1877, as amended by sect. 92 of Act XII. of 1879, to call for the record of the case and pass an order therein, unless the judges of the lower Court have acted illegally or with material irregularity. RAJAH AMIR HASSAN KHAN *v.* SHEO BAKSH SINGH - - - xi. 237

2. —— *Powers of Appeal Courts—Act X. of* 1877, *s.* 622.] Sect. 622, Civil Procedure Code, does not authorize the Court acting thereunder to order that a final judgment of a competent Court from which no appeal is allowed by law should be set aside.—Where such order has been made, and subsequently discharged, a further application to restore it is incompetent as being a second application for review. MUHAMMAD YUSUF KHAN *v.* ABDUL RAHMAN KHAN xvi. 104

3. —— *Appealable Order—Act X. of* 1877, *s.* 244; *Act X. of* 1877, *s.* 588, *cl. R. & J.*] *Held*, that an order under sect. 244 of Act X. of 1877 for attachment of property in execution of a decree is of the same nature as an order under sect. 485 for the attachment of property in the course of a suit, and that as the latter is appealable under clause R. of sect. 588, so the former is appealable under clause J. of the same section. PULUKDHARI ROY *v.* RAJAH RADHA PERSHAD SINGH - - - - - viii. 165

4. —— *Act VIII. of* 1859, *s.* 119—*Appeal from ex parte Judgment.*] In sect. 119 of Act VIII. of 1859, the words "no appeal shall lie from a judgment passed *ex parte* against a Defendant who has not appeared," relate to the case of a Defendant who has not appeared at all in the suit, and not to a Defendant who has once appeared, but who fails to appear on a day to which the cause has been adjourned. SAHIBZADA ZEINULABDIN KHAN *v.* SAHIBZADA AHMED RAZA KHAN - - - - - v. 233

5. —— *Appeal—Act XX. of* 1863, *s.* 10—*Act X. of* 1877, *s.* 540.] A right of appeal from the decision of a judge must be given by statute or an equivalent authority.—*Held*, that neither sect. 10 of Act XX. of 1863 nor sect. 540 of Act X. of 1877 give a right of appeal from a judge acting under the earlier Act. MEENAKSH NAIDOO *v.* SUBRAMANJA SASTRI - - - xiv. 160

6. —— *Second Appeals—Act XIV. of* 1882, *ss.* 584, 585—*Secondary Evidence—Copy of a Deed.*] Under sects. 584 and 585 of the Code of Civil Procedure, 1882, a second appeal is not permitted upon a question of fact. The only questions in this case which the Judicial Commissioner in *Oudh* in second appeal, and therefore their Lordships in further appeal, could try were (1) whether a case arose for admitting secondary evidence; (2) whether the evidence adduced was really secondary evidence, both which were decided in the affirmative.—*Held*, that a copy of a deed filed in another suit and still in the records of the Court, indorsed "copy in accordance with the original," signed by the Judge who alone was authorized to compare and accept a copy, is admissible secondary evidence. LACHMAN SINGH *v.* MUSSUMMAT PUNA xvi. 125

APPEALS—*continued.*

7. —— *Second Appeals—Act XIV. of* 1882, *s.* 584.] No second appeal lies except on the grounds specified in sect. 584 of the Civil Procedure Code.—There is, therefore, no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be.—Where there is no error or defect in the procedure the finding of the first Appellate Court upon a question of fact is final, if that Court had before it evidence proper for its consideration in support of the finding.—*Futtehma Begum* v. *Mohamed Ausur* (Ind. L. R. 9 Calc. 309) and *Nivath Singh* v. *Bhikki Singh* (Ind. L. R. 7 All. 649) overruled. MUSSUMMAT DURGA CHOUDHRAIN *v.* JAWAHIR SINGH CHOUDHRI - - - **xvii. 122**

8. —— *Second Appeals—Act XIV. of* 1882, *s.* 584.] Although a third Court cannot entertain an appeal under sect. 584 of the Code of Civil Procedure upon any question as to the soundness of findings of fact by a second Court; it can, nevertheless, adjudicate as matter of law upon the soundness of the conclusions which have been derived from those findings.—Where the third Court held that the evidence did not justify the second Court's conclusion that the Defendant was bound by a mortgage executed by his mother: *held*, that the judgment was substantially one of law, and was capable of being affirmed without interfering with the findings of fact of the lower Appellate Court. RAM GOPAL *v.* SHAMSKHATON [**xix. 228**

9. —— *Second Appeals—Substantial Error in Procedure.*] Where the first Appellate Court had, in the absence of evidence, found that a deed of compromise upheld by the lower Court was not for the benefit of a certain infant:—*Held*, that this was a substantial error or defect in the procedure of the first Appellate Court, and that the High Court was right in second appeal in restoring the decree of the lower Court. RANI HEMANTA KUMARI DEBI *v.* BROJENDRA KISHORE ROY CHOWDRY - - - - **xvii. 65**

10. —— *Second Appeals—Mixed Questions of Law and Fact.*] A second appeal will lie on a finding of adverse possession when such finding is a mixed question of law and fact depending upon the proper legal conclusion to be drawn from the findings as to simple facts. MAHARAJAH SIR LUCHMESSAR SINGH BAHADOOR *v.* SHEIK MANOWAR HOSSEIN - - - **xix. 48**

11. —— *Second Appeals—Act XIV. of* 1882, *ss.* 584, 585.] Under sects. 584 and 585 of Civil Procedure Code, 1882, an appellant must not be allowed in second appeal to question the finding of the first Appellate Court upon a matter of fact. PERTAB CHUNDER GHOSE *v.* MOHENDRA PURKAIT - - - - - **xvi. 233**

—— Cross Appeals - - - **xii. 23**
See RES JUDICATA. 8.

APPELLATE JURISDICTION - - **xii. 215**
See HIGH COURT. 2.

APPLICATION TO COMPEL REGISTRATION
See REGISTRATION. 6. [**iii. 221**

APPOINTED DAUGHTER - - **ii. 163**
See HINDU LAW. 80.

APPOINTMENT - - - **xx. 150**
See RELIGIOUS ENDOWMENTS. 9.

APPORTIONMENT - - - **xii. 171**
See MORTGAGOR. 3.

ARATHS - - - - **vi. 238**
See PRINCIPAL AND AGENT. 1.

ARBITRATION—*Award.*] *Held*, that the Appellant not having been a party submitting to arbitration was not bound by the award, and therefore acquired no interest thereunder, and could derive no right or interest therefrom. CHAUDHRI HIRA SINGH *v.* CHAUDHRI GUNGA SAHAI AND AMIN SINGH - - - **xi. 20**

2. —— *Award — Arbitrator's Misconduct.*] Where two parties had signed a general reference to arbitrators to decide between them upon their respective rights, and on the face of the award it appeared that the arbitrators had inquired into the matters referred, and no ground appeared for saying that they had misconducted themselves or made any mistake in conducting the inquiry:—*Held*, that the award was binding. RANI BHAGOTI *v.* RANI CHANDAN - **xii. 67**

3. —— *Award—Act XIV. of* 1882, *s.* 525—*Refusal to file Award—Act XIV. of* 1882, *s.* 13—*Arbitrator's Misconduct.*] In a suit by two sons of a deceased Mahomedan to recover their shares in their father's estate from their brother, the Defendant pleaded that he was entitled to the said estate under an award in his favour made on a submission to which the Plaintiffs were parties; but it appeared that the Civil Court had refused an application under sect. 525 of the Civil Procedure Code to file the same:—*Held*, that this order was not a decision as to the validity of the award within the meaning of sect. 13.

Where a dispute relating to land and the right of succession thereto was referred by the members of a Mahomedan family to a private arbitrator selected by reason of his knowledge of the circumstances of the family, without any stipulation that he was to be controlled in his decision by any custom or Mahomedan law, and the arbitrator decided on the broad view of giving effect to what he conceived to be the intention of the deceased father of the parties:—*Held*, that this could not be relied on as misconduct, and that such decision was within the right of the arbitrator. MUHAMMED NAWAZ KHAN *v.* ALAM KHAN - - - - - **xviii. 73**

4. —— *Act XIV. of* 1882, *ss.* 508, 514, 521—*Award made beyond Time—Invalidity of Award.*] An order referring a suit was made by the Civil Court under sect. 508, Civil Procedure Code, without fixing a time within which the award should be made; subsequent orders, under sect. 514, corrected this mistake, the last of them extending the time to the 20th of March, 1885. The award was delivered on the 24th of March, 1885; a decree was made upon it which was affirmed by the High Court:—*Held*, that, under sect. 521, the award was invalid, and that the suit referred must be proceeded with. No costs were given to the Appellant in the Courts below, inasmuch as the objection to the validity of the

ARBITRATION—*continued.*

award had not been taken therein.—*Chuha Mal* v. *Hari Ram* (Ind. L. R. 8 Allah. 548) approved. RAJA HAR NARAIN SINGH v. CHAUDHRAIN BHAGWANT KUAR - - - - xviii. 55

5. —— *Act VIII. of* 1859, *ss.* 326, 327—*Setting aside Award—Substantial Objection to Award—Acquiescence*] In an application under sect. 327 of Act VIII. of 1859, to have an award filed in Court so as to be enforced as a decree, it was objected on behalf of the Defendant, amongst other things, that the award which determined the succession to a talookdary registered under Act I. of 1869, having been based upon a certain will produced, which in terms referred to another will of the same testator not produced, there was miscarriage on the part of the arbitrators in making their award; the whole of the will, in the absence of the last mentioned document, not having been before them. It appeared that the Defendant, in the proceedings before the arbitrators, notwithstanding the knowledge that this document was withheld, submitted, nevertheless, to take his chances of the arbitration; suggesting in fact favourable presumptions to himself in construing the will produced, or that the whole will not having been produced it should be declared not to be operative, and that consequently the dispute should be determined according to the British law of succession as laid down by Act I. of 1869, or according to custom, or according to the Mahomedan law of succession.

Held, that the award could not be set aside on the ground of the objection taken.—According to the true construction thereof, the earlier sections are not incorporated into sect. 327 of Act VIII. of 1859, as they are into sect. 326. The words "sufficient cause" in sect. 327 should be taken to comprehend any substantial objection which appears on the face of the award, or is founded on the misconduct of the arbitrator, or on any miscarriage in the course of the proceedings, or upon any other ground which would be considered fatal to an award on an application to the Courts in *England*. CHOWDHRI MURTAZA HOSSEIN v. MUSSUMAT BIBI BECHUNNISSA iii. 209

6. —— *Act VIII. of* 1859, *s.* 181—*Arbitration Award.*] In a suit for an account it was ordered by consent of the parties that the cause should be referred to a commissioner to take accounts, who in taking them was to decide upon all questions of fact, whether as to the delivery of certain merchandise, or the value of such merchandise delivered or otherwise, with full powers for the purpose of the investigation; and that if questions of law should arise and could not be settled or disposed of before the commissioner, they were to be submitted to the Court:—*Held*, that this reference was different from the ordinary reference to a commissioner to examine accounts under Art. 181 of the *Code of Civil Procedure*.—Whether it would be competent to the Court to re-open a question of account against a clear finding upon a question of fact relating to the account and made by the commissioner upon the evidence properly before him, *quære*. WATSON v. AGA MEHEDEE SHERAZEE [i. 346

ARBITRATOR'S MISCONDUCT xii. 67; xviii. 73
See ARBITRATION. 2, 3.

ARIAT - - - - - viii. 25
See MAHOMEDAN LAW. 3.

ARREARS OF ESTATE SUBJECT TO COLLECTOR'S ORDER UNDER CESS ACT, 1880 [xx. 165
See SALE FOR ARREARS OF REVENUE. 5.

ARREARS OF ESTATE UNDER ATTACHMENT [i. 89
See SALE FOR ARREARS OF REVENUE. 1.

ARREARS OF MAINTENANCE - Supp. 203
See HINDU LAW. 85.

ARREARS OF REVENUE, SALES FOR.
See Cases collected under SALES FOR ARREARS OF REVENUE.

ARTIFICIAL CHANNEL - - - vi. 33
See RIPARIAN PROPRIETORS. 2.

ASSESSMENT OF RENT OF ACCRETED LANDS
See ACCRETION. 3. [xiii. 116

ASSESSMENT OF VALUE OF LAND - xx. 80
See LAND TAKEN COMPULSORILY. 3.

ASSIGNMENT OF COVENANT - - vii. 107
See POTTAH. 2.

ASSIGNMENT OF TRUSTEESHIP INVALID
See RELIGIOUS ENDOWMENTS. 4. [iv. 76

ATTACHMENT—*Act VIII. of* 1859, *ss.* 239, 240—*Alienation of attached Property—Practice in Privy Council—New Objections—Onus Probandi.*] Any alienation of property subject to a valid and subsisting attachment is null and void as against the attaching creditors and those deriving title under them; unless such alienation can be shewn not to fall within sect. 240 of Act VIII. of 1859.—An objection that the formalities prescribed by sect. 239, and contemplated by sect. 240 have not been duly observed must be taken in the Court below, and cannot be raised for the first time before their Lordships; and *quære*, whether it is not for the Plaintiff claiming adversely to a Defendant in possession to prove the non-performance of such formalities. RAM KRISHNA DAS SURROWJI v. SURFUNNISSA BEGUM - - vii. 157

—— - - - - - ii. 145
See RELIGIOUS ENDOWMENTS.

—— - - - - - i. 89
See PRACTICE. 30.

—— - - - - - xvii. 181
See EXECUTION OF DECREE. 9.

ATTACHMENT OF DECREE FOR MESNE PROFITS - - - viii. 65
See EXECUTION SALES. 5.

ATTACHMENT OF DECREE PENDENTE LITE [viii. 65
See EXECUTION SALES. 5.

ATTESTATION BY SUBSTANTIAL PERSONS [ii. 71
See SALES FOR ARREARS OF REVENUE. 6.

AUCTION PURCHASER - - xix 166
See EXECUTION SALES. 14.

AUTHORITY TO ADOPT iii 72, 154; xii. 198; [xvi. 166
See HINDU LAW. 14, 22, 17, 116.

AUTHORITY TO ADOPT—*continued.*

—— - - - - - - xvi. 53
See OUDH LAW. 25.

AUTHORITY OF AGENT - - vii. 8
See LIMITATION. 21.

—— - - - - - - v. 130
See PRINCIPAL AND AGENT. 7.

AUTHORITY TO SUE - - - xix. 135
See PRINCIPAL AND AGENT. 5.

AWARD - i. 346; xi. 20; xii. 67; xviii. 73
See ARBITRATION. 6, 1, 2, 3.

AWARD MADE BEYOND TIME - xviii. 55
See ARBITRATION. 4.

BA FARZANDAN - - - xii. 205
See POTTAHS. 6.

BANDHU - - - - - ii. 163
See HINDU LAW. 80.

BANIAN - - - - - xviii. 78
See PRINCIPAL AND BANIAN.

BANKER AND CUSTOMER—*Evidence as to Payment of Cheque.*] Case in which it was held on the evidence that the Respondent bank had, on the presentation by the Appellants' servant of a cheque drawn upon it in favour of the Appellants, failed to pay the same in such manner as to be discharged of its obligation. LALL CHAND *v.* AGRA BANK - - - - xviii. 111

BENAMEE TRANSACTIONS—*Evidence of Actual Possession—Act XI. of* 1859, *s.* 13—*Limitation—Act XV. of* 1877, *art.* 144—*Durmokurruri.*] Where there are benamee transactions, and the question is who is the real owner, the actual possession or receipt of the rents of the property is most important.

In a suit against a purchaser at a sale under Act XI. of 1859, sect. 13, the Plaintiff claimed to have an incumbrance by virtue of two mokurruri pottahs executed by the heirs of the last of a series of benameedars, and it appearing that the last benameedar had actual ownership of one-fourth of the property comprised therein:—*Held*, that the incumbrance was good to the extent of such fourth, and that the claim was not barred by art. 144 of Act XV. of 1877, Sched. II. —Where a durmokurruri has been granted and then relinquished for valuable consideration to the grantors, no formal reconveyance is necessary to revest the title in the latter. IMAMBANDI BEGUM *v.* KUMLESWARI PERSHAD - xiii. 160

2. —— *Evidence.*] Case in which it was held on the evidence, in a suit brought in 1879, that a purchase by a Hindu wife of a share of her husband's ancestral estate in 1842 was benamee for her husband. DHARANI KANT LAHIRI CHOWDHRY *v.* KRISTO KUMARI CHOWDHRANI xiii. 70

3. —— *Evidence — Wajib-ul-arz.*] Case in which it was held that an alleged benamee transfer operated as a valid conveyance; in the absence of sufficient evidence to the contrary.—A wajib-ul-arz ought not to be entered on the record as a mere expression of the views of the proprietor of an estate; it should be entered as an official record of local customs. UMAN PARSHAD *v.* GANDARP SINGH - - - - xiv. 127

BENAMEE TRANSACTIONS—*continued.*

4. —— *Evidence.*] Case in which it was held that certain properties which had been partly purchased in the wife's name, and partly transferred to her name by her husband, belonged beneficially to the wife, and were not benamee for the husband; and in which the prior conduct and representations of the Plaintiff inconsistent with the allegations in the plaint that the transactions were benamee for the husband, were *held* to defeat his claim. MUSSAMMAT THAKRO *v.* GANGA PERSHAD - - - - xv. 29

5. —— *Mortgage by Benameedar — Equity of Mortgagee.*] Where a benameedar purchased property with moneys borrowed from the Appellant, and afterwards mortgaged the purchased property to the Appellant to secure the debt, the Appellant being aware of the benamee character of the title, and the real purchaser being cognizant of the mortgage:—*Held*, in a suit against the benameedar and the beneficial owner, that even if the mortgagor had not created a valid hypothecation of the property, still the Appellant was entitled in equity to a declaration that the sums advanced with interest were a charge thereon. SARJU PARSHAD *v.* BIR BHADDAR SEWAK PANDAY - - - xx. 108

BENEFICIAL INTERESTS IN RE-GRANTED ESTATE - - - - iv. 178
See OUDH LAW. 11.

BENGAL ACTS - - - -
See ACTS OF THE LEGISLATURE.

BENGAL REGULATIONS.
See REGULATIONS.

BEQUEST AS DISTINGUISHED FROM WISH
See MAHOMEDAN LAW. 21. [viii. 117

—— - - - - - - - ix. 70
See WILLS. 5.

BEQUEST TO MEMBERS OF JOINT FAMILY
See HINDU LAW. 108. [vi. 182

BEQUEST TO PERSON ENTITLED TO MAINTENANCE - - - - xi. 121
See OUDH LAW. 20.

BEQUEST TO SISTER'S SON - - xi. 121
See OUDH LAW. 20.

BEST EVIDENCE - - - - vii. 8
See EVIDENCE. 1.

BIRT TENURES—*Land Tenures—Birts—Shankallaps—Limitation in Oudh.*] Sects. 1 and 24 of a Circular Order of 1861, which enact in effect that if a birteeah is out of possession in 1855 his claim cannot be recognised have been treated as enactments of limitation by the authorities in *Oudh*, and to some extent by the Legislature itself; but whether rightly so or not, they have in effect been repealed by Acts XVI. of 1865 and XIII. of 1866.—The Circular Order applied to all birt tenures, including shankallaps, so far as the latter are in the nature of birts.—The effect of sects. 1 and 2 of Act XXVI. of 1866 discussed. SIR MAHARAJAH DRIG BIJAI SINGH *v.* GOPAL DATT PANDAY - - - - vii. 17

—— - - - - - - vi. 145
See OUDH LAW. 30.

BOMBAY ACTS - - - -
See ACTS OF THE LEGISLATURE.

BONA FIDE ARREST OF LUNATIC - ix. 152
See ILLEGAL ARREST.

BOOKS OF ACCOUNT - - - xiv. 142
See PRACTICE. 28.

BOUNDARY CASES - - - xix. 140
See LIMITATION. 4.

BOUNDARY FLUCTUATING - - Supp. 34
See RIPARIAN PROPRIETORS. 1.

BOUNDARY SUITS - - - xix. 40
See ONUS PROBANDI. 8.

BREACH OF CONTRACT - - iii. 194
See CAUSE OF ACTION. 5.

BREACH OF USER - - - xiii. 77
See EASEMENT. 1.

BREACH OF WARRANTIES - - xiii. 60
See DAMAGES. 2.

BROTHERS - - - - iv. 147
See HINDU LAW. 81.

—— - - - - - - - i. 23
See MAHOMEDAN LAW. 15.

BROTHERS AND THEIR DESCENDANTS
See OUDH LAW. 21. [xvii. 82

BUDDHIST LAW OF MARRIAGE — *Burmah Courts Act*, 1875, *sect.* 4—*Buddhist Law—Marriage.*] In a suit by a wife against her husband to recover the expenses of necessaries and living for the past five years:—*Held*, that the parties being Buddhists, the case must under the *Burmah Courts Act*, 1875, sect. 4, be decided according to the Buddhist law; and that by that law the wife having maintained herself out of her separate property cannot sue for maintenance for the period during which she has done so:—*Held*, also, that even if the rule of justice, equity, and good conscience applied, the Plaintiff had not established any ground for making the Defendant liable for her maintenance. MOUNG HMOON HTAW *v.* MAH HPWAH - - - xi. 109

BURMAH COURTS ACT, 1875 (XVII. of 1875), s. 4 - - - - xi. 109
See BUDDHIST LAW OF MARRIAGE.

CANCELMENT OF DEEDS - - xi. 211
See FRAUD. 2.

CANCELMENT OF LEASE - - xv. 77
See OUDH LAW. 33.

CANCELMENT OF TENURE - Supp. 181
See GHATWALI TENURES. 1.

CARGO - - - - - - xvi. 240
See GENERAL AVERAGE.

CARRIER'S LIABILITY - - xviii. 121
See COMMON CARRIERS.

CASES APPROVED, OVERRULED, OR SPECIALLY CONSIDERED.

—— *Abbott* v *Middleton* (7 H. L. C. 89) approved - - - - xv. 127
See OUDH LAWS. 22.
HINDU LAW. 114.

CASES APPROVED, OVERRULED, OR SPECIALLY CONSIDERED—*continued.*

—— *Alderson* v. *White* (2 De G. & J. 105) approved - - - - xvii. 98
See MORTGAGE. 3.

—— *Anund Lall Singh Deo* v. *Maharajah Gobind Narain Deo* (5 Moore's Ind. Ap. Ca. 82) approved - - - viii. 248
See HINDU LAW. 55.

—— *Appovier* v. *Rama Subba Aiyan* (11 Moore's Ind. Ap. Ca. 75) approved - i. 9, 55; *See* HINDU LAW. 67, 68, 69. [v. 228

—— *Baboo Beer Pertab Sahee* v. *Maharaja Rajender Pertab Sahee* (12 Moore's Ind. Ap. Ca. 1) distinguished - vii. 38; [approved viii. 59, 99; xvii. 134
See HINDU LAW. 54, 59, 73, 77.

—— *Baboo Kameswar Pershad* v. *Run Bahadoor Singh* (Law Rep. 8; Ind. Ap. 8) considered - - - - xix. 1
See ONUS PROBANDI. 6.

—— *Bank of Bengal* v. *Macleod* (5 Moore's Ind. Ap. Ca. 1) distinguished - xi. 94
See POWER OF ATTORNEY.

—— *Beynon* v. *Cook* (Law Rep. 10 Ch. 391) approved - - - - xii. 215
See HIGH COURT. 2.

—— *Bhagbut Pershad* v. *Girja Koer* (Law Rep. 15; Ind. Ap. 99) followed - xvii. 11
See HINDU LAW. 49.

—— *Bhoobunmoyee Dabee* v. *Ram Kishore Acharj Chowdhry* (10 Moore's Ind. Ap. Ca. 279) distinguished - - iv. 1; xiv. 67
See HINDU LAW. 15, 18.

—— *Bickett* v. *Morris* (Law Rep. 1 H. L., Sc. 47) considered - - - vi. 190
See RIPARIAN PROPRIETORS. 3.

—— *Brikaji Apaji* v. *Jagannath Vithal* (10 Bomb. H. C. R. 351) approved - viii. 14
See HINDU LAW. 72.

—— *Bullen* v. *Sharp* (Law Rep. 1 C. P. 86) approved - - - - Supp. 86
See PARTNERSHIP.

—— *Chintamun Singh* v. *Nowlukho Konwari* (Law Rep. 2 Ind. Ap. 263) approved
See HINDU LAW. 57. [xi. 149

—— *Chotay Lall* v. *Chunno Lall* (Law Rep. 6 Ind. Ap. 15) approved - viii. 99
See HINDU LAW. 77.

—— *Chuha Mal* v. *Hari Ram* (Ind. L. R. 8 Allah. 548) overruled - xviii. 55
See ARBITRATION. 4.

—— *Collector of Madura* v. *Ramalinga Sathupathy* (12 Moore's Ind. Ap. Ca. 397) explained - - - iii. 154; iv. 1
See HINDU LAW. 15, 22, 52.

—— *Collector of Masalipatam* v. *Cavalry Vencata Narainapah* (8 Moore's Ind. Ap. Ca. 500) approved - - - iii. 92
See HINDU LAW. 50.

—— *Collector of Trichinopoly* v. *Lekhamani* (Law Rep. 1 Ind. Ap. 282) approved iii. 154
See HINDU LAW. 51.

CASES APPROVED, OVERRULED, OR SPECIALLY CONSIDERED—*continued.*

—— *Cotterell* v. *Jones* (11 C. B. 735) approved [iv. 23
See CAUSE OF ACTION. 4; and CHAMPERTY. 2.

—— *Cox* v. *Hickman* (8 H. L. C. 268) approved
See PARTNERSHIP. [Supp. 86

—— *Deendyal Lal* v. *Jugdeep Narain Singh* (Law Rep. 4 Ind. Ap. 247) explained
See HINDU LAW. 44. [xiii. 1

—— *Dhurm Das Pandey* v. *Mussumat Shama Soondri Dibiah* (3 Moore's Ind. Ap. Ca. 229) followed - - - xv. 195
See HINDU LAW. 92.

—— *Duncan Fox & Co.* v. *North and South Wales Bank* (6 App. Cas. 1) followed xix. 24
See PROMISSORY NOTE.

—— *Eschen Munda Singh* v. *Shamachnon Oshutto* (11 Moore's Ind. Ap. Ca. 7) xiv. 168
See LIMITATION. 39.

—— *Fischer* v. *Naikber* (8 Moore's Ind. Ap. Ca. 170) distinguished - - i. 241
See CHAMPERTY. 1.

—— *Fletcher* v. *Rylands* (Law Rep. 3 H. L. 330) distinguished - - - i. 364
See DAMAGES. 3.

—— *Forester* v. *Secretary of State for India* (Law Rep. (Supp.) 10) distinguished
See ACT OF STATE. 2. [Supp. 119

—— *Futtehma Begum* v. *Mohamed Ausur* (Ind. R. R. 9 Calc. 309) overruled xvii. 102
See APPEALS. 7.

—— *Ganga Sahai* v. *Hira Singh* (Ind. L. R. 2 Allah. 809) overruled - xix. 203
See ESTOPPEL. 4.

—— *Gregory* v. *Molesworth* (3 Atk. 206) approved [Supp. 212
See CAUSE OF ACTION. 1.
RES JUDICATA. 1.

—— *Girdhari Lall* v. *Kantoo Lall* (Law Rep. 1 Ind. Ap. 321) approved - ix. 128
See HINDU LAW. 56.

—— *Haidri Bai* v. *East Indian Railway Company* (Ind. L. R. 1 Allah. 688) overruled
See PRACTICE. 47. [xvii. 1

—— *Humphrey* v. *Tayleur* (Amb. 138) approved
See HINDU LAW. 93. [xvi. 44

—— *Hunoomanpershad Panday* v *Mussumat Babooee Munraj Koonweree* (6 Moore's Ind. Ap. Ca 393) followed viii. 8; xix. 196;
See HINDU LAW. 90, 97. [xviii. 1
PRINCIPAL AND AGENT. 4

—— *Hunsapore Case* (12 Moore's Ind. Ap. Ca. 1) distinguished - vii. 38; approved, [viii. 59, 99; xvii. 134
See HINDU LAW. 54, 59, 73, 77.

—— *Hurpurshad* v. *Sheo Dyal* (Law Rep. 3 Ind. Ap. 259) followed - - xvii. 82
See OUDH LAWS. 21.

—— *Isridut Koer* v. *Mussumat Hansbutti Koerain* (Law Rep. 10 Ind. Ap. 150) followed - - - - xiv. 63
See HINDU LAW. 101.

CASES APPROVED, OVERRULED, OR SPECIALLY CONSIDERED—*continued.*

—— *Jagadamba Chowdhrani* v. *Dakhina Mohun* (Law Rep. 13 Ind. Ap. 84) followed
See HINDU LAW. 26. - - [xx. 30

—— *Jijoyiamba Bayi Saiba* v. *Kamakshi Bayi Saiba* (3 Madras H. C. R. 424) approved
See HINDU LAW. 87. [iv. 212

—— *Kali Das Mullick* v. *Kanhya Lal Pundi* (Law Rep. 11 Ind. Ap. 218) followed
See MAHOMEDAN LAW. 2. [xv. 81

—— *Katama Natchiar* v. *Rajah of Shivagunga* (9 Moore's Ind. Ap. Ca. 539) approved [ii. 263; xx. 183
See HINDU LAW. 34, 53, 99.

—— *Kistonauth Roy, Ex parte* (Law Rep. 2 P. C. 274) approved - - - v. 171
See PRACTICE. 14.

—— *Krishna Behari Roy* v. *Brojeswari Chowdhrani* (Law Rep. 2 Ind. Ap. 288) followed - - - - xij. 23
See RES JUDICATA. 8.

—— *Lady Langdale* v. *Briggs* (8 De G. M. & G. 391) distinguished - - Supp. 47
See HINDU LAW. 31, 105, 110.

—— *Lainson* v. *Lainson* (5 D. M. & G. 754) approved - - - - xi. 1
See OUDH LAWS. 24.
WILLS. 2.

—— *Lala Gowri Sunker Lal* v. *Janki Pershad* (Law Rep. 17 Ind. Ap. 57) followed [xx. 165
See SALES FOR ARREARS OF REVENUE. 5.

—— *Lalla Narain Doss* v. *The Estate of the ex-King of Delhi* (11 Moore's Ind. Ap. Ca. 277) commented on - - Supp. 119
See ACTS OF STATE. 2.

—— *Ledgard* v. *Bull* (Law Rep. 13 Ind. Ap. 134) followed - - - xiv. 160
See RELIGIOUS ENDOWMENTS. 7.
HIGH COURT. 4.

—— *Lopez* v. *Muddun Mohun Thakoor* (13 Moore's Ind. Ap. Ca. 467) approved - ii. 28
See ACCRETION. 1.

—— *Maharani Hiranath Koer* v. *Ram Narain Singh* (9 Beng. L. R. 274) approved
See HINDU LAW. 57, 78. [xi. 149

—— *Marangapury Case* (Law Rep. 1 Ind. Ap. 282) approved - - - iii. 154
See HINDU LAW. 52.

—— *Mohesh Chunder Sein* v. *Mussumat Tarinee* (10 Suth. W. R. F. B. 27) approved
See MORTGAGEE 5. [v. 18

—— *Mohumnad Zahoor Ali Khan* v. *Mussumat Thakooranee Koer* (11 Moore's Ind. Ap. Ca. 468) distinguished - ix. 182
See GUARDIAN. 2.

—— *Montesquieu* v. *Sandys* (18 Ves. 302) approved - - - - xiv. 11
See FRAUD. 3.

—— *Moonshee Buzloor Ruheem* v. *Shumsoonnissa Begum* (11 Moore's Ind. Ap. Ca. 553) followed - - - - xii. 116
See CAUSE OF ACTION. 8.

—— *Morgan* v. *Powell* (3 Q. B. 278) approved
See DAMAGES. 1. [v. 130

CASES APPROVED, OVERRULED, OR SPECIALLY CONSIDERED—*continued.*

— *Mussumut Wahidunnissa* v. *Mussumat Shabrattun* 6 Beng L. R. 54) approved *See* MAHOMEDAN LAW. 11. [v. 211

— *Muzhurool Hug* v. *Puhraj Ditarey Mohapattar* (13 Suth. W. R. 235) approved *See* MAHOMEDAN LAW. 23. [xvii. 28

— *Nanomi Babuasin* v. *Modun Mohun* (Law Rep. 13 Ind. Ap. 1) followed xvii. 11 *See* HINDU LAW. 49.

— *Nawab Sidhee Nuzur Ali Khan* v. *Rajah Ojoodhyram Khan* (10 Moore's Ind Ap. Ca. 540) approved - - i. 106 *See* MORTGAGEE. 1.

— *Nawab Sultan Mariam Begum* v. *Nawab Sahib Mirza* (Law Rep. 16 Ind. Ap. 175) followed - - - xvii. 181 *See* EXECUTION OF DECREE. 9.

— *Needham* v. *Oxley* (1 H. & M. 248) approved *See* PATENT. [xiii. 134

Nidhoo Moni Debia v. *Saroda Pershad Mookerjee* (Law Rep. 3 Ind. Ap. 253) distinguished - - - xii. 72 *See* HINDU LAW. 7.

— *Nivath Singh* v. *Bhikki Singh* (Ind. L. R. 7 Allah. 649) overruled - xvii. 102 *See* APPEALS. 7.

Norendur Narain Singh v. *Devaska Lal Mundur* (Law Rep. 5 Ind. Ap. 18) followed - - - - xi. 186 *See* MORTGAGEE. 6.

— *Nuzvid Case* (Law Rep. 7 Ind. Ap. 38) distinguished - - - viii. 99 *See* HINDU LAW. 77.

— *Olpherts* v. *Mahabir Pershad Singh* (Law Rep. 10 Ind. Ap. 25) distinguished [xix. 191 *See* SALES FOR ARREARS OF REVENUE. 9.

— *Patthabhiramier* v. *Venkatarow Naicken* (13 Moore's Ind. Ap. Ca. 560) approved *See* MORTGAGE. 1. [ii. 241

— *Pearylall Mozoomdar* v. *Komal Kishore Dassia* (Ind. L. R. 6 Calc. 30) approved [xiii. 134 *See* PATENT AND TRANSFER OF SUITS.

— *Peruvian Guano Company* v. *Dreyfus Brothers* ([1892] A. C. 166) referred to *See* TRESPASSERS. 1. [xx. 160

— *Pillai* v. *Pillai* (Law Rep. 2 Ind. Ap. 219) approved - - - - v. 78 *See* PRACTICE. 27.

— *Pisani* v. *Attorney-General of Gibraltar* (Law Rep. 5 P. C. 16) approved - ii. 219 *See* EXECUTION OF DECREE. 2.

— *Pudma Coomari Debi* v. *Court of Wards* (Law Rep. 8 Ind. Ap. 229) followed *See* HINDU LAW. 18. [xiv. 67

— *Radhanath Doss* v. *Gisborne & Co.* (14 Moore's Ind. Ap. Ca. 1) approved ii. 48 *See* LIMITATION. 13.

— *Rajah Bishnath Singh* v. *Ramchurn Majmoadar* (Beng. S. D. A. 1850, p. 20) approved - - - - xii. 72 *See* HINDU LAW. 7.

CASES APPROVED, OVERRULED, OR SPECIALLY CONSIDERED—*continued.*

— *Rajah Lelanund Singh* v. *Government of Bengal* (6 Moore's Ind. Ap. Ca. 101) approved - - - ix. 104 *See* GHATWALI TENURES. 2.

— *Rajah Venkata Narasimha Appa Row Bahadur* v. *Rajah Narayya Appa Row Bahadur* (Law Rep. 7 Ind. Ap. 38) distinguished - - - viii. 99 *See* HINDU LAW. 77.

— *Raj Bahadoor Singh* v. *Achambit Lal* (Law Rep. 6 Ind. Ap. 110) explained xiii. 84 *See* LIMITATION. 26. HINDU LAW. 13.

— *Rajkishore Lahoory* v. *Gobind Chunder Lahoory* (Ind. L. R. 1 Calc. 27) approved *See* HINDU LAW. 81. [iv. 147

— *Rajunder Narain Rae* v. *Bijai Govind Sing* (2 Moore's Ind. Ap. Ca. 220) - v. 171; *See* PRACTICE. 13, 14. [xiii. 155

— *Ramalakshmi Ammal* v. *Sivanantha Perumal* (Law Rep. Supp. 1) approved viii. 1 *See* HINDU LAW. 91.

— *Ramcoomar Coondoo* v. *Chunder Canto Mookerjee* (Law Rep. 4 Ind. Ap. 47) followed - - - - xx. 127 *See* CHAMPERTY. 4.

— *Ramnad Case* (12 Moore's Ind. Ap. Ca. 397) explained - iv. 1; approved, iii. 154 *See* HINDU LAW. 15, 22, 52.

— *Ram Sahuk Bose* v. *Monomohini Dossee* (Law Rep. 2 Ind. Ap. 71) approved *See* WILLS. 5. [ix. 70 PRACTICE. 10.

— *Ranee Surnomoyee* v. *Shooshee Mokhee Burmonia* (12 Moore's Ind. Ap. Ca. 244) considered - - - ix. 82 *See* LIMITATION. 2.

— *Roy Dhumput Singh* v. *Mudhomotee Dabia* (11 Beng. L. R. 23) considered vii. 167 *See* LIMITATION. 16.

— *Royal British Bank* v. *Turquand* (3 E. & B. 248; 6 E. & B. 327) distinguished iv. 86 *See* DIRECTORS OF COMPANY.

— *Rungama* v. *Atchama* (4 Moore's Ind. Ap. Ca. 1) approved - Supp. 131; xx. 80 *See* HINDU LAW. 25, 26.

— *Sadasiva Pillai* v. *Ramalinga Pillai* (Law Rep. 2 Ind. Ap. 219) approved - v. 78 *See* PRACTICE. 37.

— *Sah Mukhun Lall Panday* v. *Sah Koondun Lall* (Law Rep. 2 Ind. Ap. 210) approved *See* REGISTRATION. 5. [iv. 166

— *Secretary of State for India* v. *Kamachee Boye Saheba* (7 Moore's Ind. Ap. Ca. 476) distinguished - - Supp. 10; [followed, ii. 38 *See* ACT OF STATE. 1, 3.

— *Sheikh Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu* (Law Rep. 17 Ind. Ap. 28) followed - - xix. 170 *See* MAHOMEDAN LAW. 24.

— *Sheo Prokash Misser* v. *Ram Sahoy Singh* (8 Beng. L. R. 165) approved - xviii. 27 *See* OCCUPANCY RIGHTS. 2.

CASES APPROVED, OVERRULED, OR SPECIALLY CONSIDERED—*continued.*

—— *Sheo Singh Rai* v. *Mussumat Dakho* (Law Rep. 5 Ind Ap. 87) approved vi. 15
See JAINS. 1.

—— *Shivagunga Case* (9 Moore's Ind. Ap. Ca. 539) approved - ii. 263; xx. 183
See HINDU LAW. 34, 53, 99.

—— *Sona Bebee* v. *Lall Chand Chowdhry* (9 S. W. R. 242) approved - - ii. 71
See SALES FOR ARREARS OF REVENUE. 6.

—— *Soorjomonee Dayee* v. *Suddanund Mohapatter* (Law Rep. Supp. 212) approved ii. 283
See CAUSE OF ACTION. 3; and RES JUDICATA. 2.

—— *Sreemutty Dossee* v. *Ranee Lalunmonee* (12 Moore's Ind. Ap. Ca. 470) followed
See PRACTICE. 40. [xix. 179

—— *Sreemutty Rabutty Dossee* v. *Sibchunder Mullick* (6 Moore's Ind Ap. Ca. 1) explained - - - - ii. 256
See HINDU LAW. 86.

—— *Sumbhoo Chunder Chowdhry* v. *Narain Dibeh* (3 Knapp, 55) approved - viii. 229
See HINDU LAW. 10, 16.

—— *Suresh Chunder Wum Chowdhry* v. *Jagut Chunder Deb* (Ind. L. R. 14 Calc. 204) approved - - - xv. 195
See HINDU LAW. 92.

—— *Tagore Case* (Supp. 47) followed - x. 51
See HINDU LAW. 111.

—— *Talbot* v. *La Roche* (15 C. B. 310) approved
See PATENT. [xiii. 134

—— *Thayammal* v. *Venkatarama Aiyan* (Law Rep. 14 Ind. Ap. 67) followed xvi. 166
See HINDU LAW. 21, 116.

—— *Toulmin* v. *Steere* (3 Mer. 210) inapplicable in India - - - - xi. 126
See MORTGAGOR. 2.

—— *Upooroop Tewari* v. *Lalla Bandhjee Suhay* (Ind. L. R. 6 Calc. 749) distinguished
See HINDU LAW. 45. [xiv. 77

—— *Vishnu* v. *Krishnan* (Ind. L. R. 7 Madr. 3) overruled - - - xix. 203
See ESTOPPEL. 4.

—— *Wallingford* v. *Mutual Society* (5 App. Cas. 697) followed - - - xv. 119
See PRACTICE. 27.

—— *Watson* v. *Ram Chand Dutt* (Law Rep. 17 Ind. Ap. 110) considered - xix. 48
See TENANCY IN COMMON. 2.

—— *Widow of Shunkur Sahai* v. *Rajah Kashi Pershad* (Law Rep. Supp. 220) approved [vi. 1; iv. 178
See OUDH LAWS. 9, 11.

—— *Wood* v. *Wand* (3 Ex. 748) approved vi. 33
See RIPARIAN PROPRIETORS. 2.

CASTE - - - - - viii. 1
See HINDU LAW. 91.

CAUSE OF ACTION—*Act VIII. of* 1859, *s.* 2—*Res Judicata.*] The term "cause of action" in sect. 2 Act VIII. of 1859 is to be construed with reference rather to the substance than to the form of action. Sect. 2 does not prevent the operation of the general law of *res judicata*, which is that

CAUSE OF ACTION—*continued.*

when a question has been necessarily decided in effect, though not in express terms, between parties to the suit, they cannot raise the same question as between themselves in any other suit in any other form. *Gregory* v. *Molesworth* (3 Atk. 206) approved. SOORJOMONEE DAYEE *v.* SUDDANUND MOHAPATTER - - - - Supp. 212

2. —— *Demand and Refusal—Application to Sue in Formâ Pauperis*] An unsuccessful application by a Mahomedan wife to be allowed to sue for her dower *in formâ pauperis* is not such a demand and refusal as to constitute a cause of action. RANEE KHUJOOROONISSA *v.* RANEE RYESOONNISSA - - - - - ii. 235

3. —— *Act VIII. of* 1859, *s.* 2—*Construction.*] The term "cause of action" in sect. 2 of Act VIII. of 1859 cannot be taken in its literal and restricted sense; it is to be construed rather with reference to the substance than to the form of the action. *Soorjomonee Dayee* v. *Suddanund Mohapatter* (Supp. 212) approved. KRISHNA BEHARI ROY *v.* BROJESWARI - - - - ii. 283

4. —— *Costs of Suit.*] An action cannot be maintained for costs of suit against a third person on the ground that he was the mover of and had an interest in a suit, in the absence of malice and want of probable cause.—*Cotterell* v. *Jones* (11 C. B. 735) approved. RAM COOMAR COONDOO *v* CHUNDA CANTO MOOKERJEE - - iv. 23

5. —— *Plaint—Contract—Breach of Contract.*] The plaint alleged that the three first Defendants, with a brother since deceased, purchased a putnee mehal therein described; that the same was thereafter sold for arrears of rent, and purchased by the said three Defendants with their own funds; but that the collector, in compliance with their petition, entered the name of their mother, the fourth Defendant, as the purchaser. The plaint then alleged a subsequent sale by the three first Defendants to the Plaintiff; that they, the said Defendants, caused a kobala to be executed by the fourth Defendant, and that they, being the real owners, became witnesses to the deed, and received the whole of the consideration money; and prayed, by reason of ouster and disturbance alleged, for damages against all the Defendants for breach of the following covenant contained in the kobala:—"If any one making any objection to the sale by me of the said mehal give you trouble in any way, then I will put matters straight. If I fail to do so, I will return the consideration money. If I do not return it you will realize it by means of a suit."

The civil Judge in whose Court the plaint was filed held that no cause of action was shewn; and the High Court, on appeal, remanded the case to try whether there had been the ouster and disturbance alleged, and whether, under the circumstances, they constituted a breach of the contract. The High Court, however, dismissed the suit against the three first Defendants, holding that the mother only was bound by the contract:—

Held, by their Lordships, that the plaint disclosed a cause of action against all the Defendants, and that the case must be remanded accordingly. One issue raised by the plaint was whether the kobala was really entered into by the mother as the agent and on behalf of the three first Defen-

CAUSE OF ACTION—*continued.*
dants, and by their authority. BISHESWARI DEBYA *v.* GOVIND PERSAD TEWARI - iii. 194

6. —— *Dues for Religious Services.*] A suit will lie to recover dues for certain religious services performed, and if to determine the right thereto it becomes necessary to determine incidentally the right to perform certain religious services, the Court has jurisdiction so to do. TIRU KRISHNAMA CHARIAR *v.* KRISHNAMA TATA CHARIAR [vi. 120

7. —— *Involuntary Payment.*] Where the purchaser of a mouzah paid money into Court to prevent the sale thereof in execution of a decree which had already been satisfied:—*Held*, that such payment was involuntary, and that an action lies against the decree holder to recover back the money, on the ground that it was inequitable that the decree holder, whose claim had been previously satisfied, should retain it. DOOLI CHAND *v.* RAM KISHEN SINGH - - - viii. 93

8. —— *Act VIII. of* 1859, *s.* 7—*Suit must include the whole Claim—Causes of Action Distinct.*] Sect 7 of Act VIII. of 1859 does not say that every suit shall include every cause of action, but that it shall include the whole of the claim arising out of the cause of action.—Where therefore a Plaintiff sued to recover immoveable property in consequence of having been improperly turned out of possession, and afterwards sued to recover from the same Defendant moveable property in consequence of its wrongful detention:—*Held*, that the causes of action were distinct, and that sect. 7 did not apply.—*Moonshee Buzlor Ruheem* v. *Shumsoonnissa Begum* (11 Moore's Ind. Ap. Ca. 553) followed. RAJAH OF PITTAPUR *v.* SRI RAJAH VENKATA MAHIPATI SURYA - - - - - xii. 116

—— - - - - Supp. 212; ii. 283
See RES JUDICATA. 1, 2.

—— - - - - - - v. 87
See DECLARATORY DECREE. 5.

—— - - - - - - v. 116
See EXECUTION SALES. 3.

—— - - - - xv. 211; xvi. 85
See LIMITATION. 32, 38.

CAUSES OF ACTION DISTINCT x. 45; xii. 116
See CAUSE OF ACTION. 8.
RES JUDICATA. 6.

CEREMONIES OF ADOPTION - vii. 24, 250; [iii. 253
See HINDU LAW. 1, 2, 8, 107.

CEREMONY OF MARRIAGE - Supp. 192
See MAHOMEDAN LAW. 16.

CERTIFICATE BEFORE SUIT - - ix. 8
See PENSIONS ACT OF 1871. 3.

CERTIFICATE OF REGISTRATION - iv. 166
See REGISTRATION. 5.

CERTIFIED PURCHASER—*Act VIII. of* 1859, *s.* 260—*Suits by and against Certified Purchaser.*] Sect. 260 of Act VIII. of 1859 must be construed strictly and literally, and is applicable only to a suit brought against a certified purchaser to assert a benamee title against him. Where the certified purchaser is a Plaintiff, the real owner, if in possession, and if that possession has been

CERTIFIED PURCHASER—*continued.*
honestly obtained, may shew in defence that the holder of the certificate is a mere trustee. LOKHEE NARAIN ROY CHOWDHRY *v.* KALYPUDDO BANDOPADHYA AND SHAMAPUDDO BANDOPADHYA [ii. 154

—— - - - - - - i. 342
See SALES FOR ARREARS OF REVENUE. 2.

—— - - - - - xvi. 129
See MORTGAGE. 2.

CESSES—*Act XIX. of* 1844—*Lago or Tax.*] Act XIX. of 1844 abolished cesses of every kind on trades and professions under whatsoever name levied within the Presidency of *Bombay*. It therefore abolished a lago or tax of two annas per bale on all cotton brought in and exported from *Broach*, which lago had belonged as of right from time immemorial to the Appellants. SHRI KALYANRAIJI *v.* MOFUSSIL COMPANY [xvii. 103

—— - - - - - xx. 70
See SALES FOR ARREARS OF REVENUE. 4.

CESSION OF BRITISH TERRITORY—*Cession of Territory by Crown without Consent of Parliament—Transfer of Territories from one Jurisdiction to another—Prerogative of Crown—Transfer of Jurisdiction.*] In the province of *Kattywar*, subject in its entirety since 1820 to the supreme authority of the British Government, the Thakoor of *Bhownuggur* was possessed of certain talooks, which had never been brought under the ordinary British administration, and in which the Thakoor exercised a wide civil and criminal jurisdiction, subject only to the supervision, laws, and regulations of the *Kattywar* Political Agency. He was also possessed, within the same province, of other talooks, including *Gangli*, which in 1802 had been ceded to the British Government and in 1815 had been placed under the ordinary jurisdiction of the British Courts of the *Bombay* Presidency. In 1848, *Gangli* was included in a lease granted by the British Government to the Thakoor, which by mutual agreement, dated the 23rd of October, 1860, was cancelled, and thereunder the British Government conceded as a favour, not as a right, the transfer of *Gangli* and other territories from the district of *Gogo* which was subject to the regulations, to the districts under the control of the *Kattywar* Political Agency. Delay having arisen in completing this transfer, the Governor General in Council, on the 31st of May, 1865, authorized its completion, "Her Majesty's Secretary of State having decided that *Kattywar* was not British territory." Thereafter, on the 29th of January, 1866, it was notified, in effect, in the *Bombay Government Gazette* that *Gangli*, by reason of the cession thereof by the British Government to the Thakoor of *Bhownuggur*, was removed from and after the 1st of February of that year from the jurisdiction of the Revenue, Civil, and Criminal Courts of the *Bombay* Presidency. And on the 4th of January, 1873 (after the *Indian Evidence Act*, 1872, had come into force), it was notified in effect in the Indian *Gazette* that *Gangli* was, on the 1st of February, 1866, ceded to the state of *Bhownuggur*.

Previous to the notification in 1866, a decree

CESSION OF BRITISH TERRITORY—*continued.*

for redemption of mortgaged land situate in *Gangli* was made by the British Court of *Gogo*, and reversed by the Judge of *Ahmedabad*; the case being subsequently remanded by the High Court at *Bombay* to the Judge, who thereupon restored the original decree, notwithstanding that in the interval the first-mentioned notification had appeared. The High Court confirmed this order, holding the notification to be insufficient to prove a transfer of jurisdiction. In review of this order, the High Court confirmed the same, on the ground that it was beyond the power of the British Crown, without the concurrence of the Imperial Parliament, to make any cession of territory within the jurisdiction of any of the British Courts in *India* in time of peace to a foreign power:—

Held, by their Lordships, that the appeal from this last-mentioned order passed in review must be dismissed.

The jurisdiction of the Courts of the *Bombay* Presidency over *Gangli* rested in 1866 upon British statutes, and could not be taken away or altered (as long as *Gangli* remained British territory), so as to substitute for it any native or other extraordinary jurisdiction, except by legislation in the manner contemplated by those statutes.—The transfer of British territories from ordinary British jurisdiction to the supervision, laws, and regulations of a political agency; by excluding such territories from the British regulations and codes theretofore in force therein, and from the jurisdiction of all British Courts theretofore established therein, with a view to the substitution of a native jurisdiction under British supervision and control, cannot be made without a legislative Act.

Such transfer of jurisdiction, even if valid, would not amount to a cession of British territory to a native State: nor would it deprive the Crown of its territorial rights over the transferred districts, or the persons resident therein of their rights as British subjects.

Although their Lordships entertained grave doubts (to say no more) as to the concurrence of the Imperial Parliament being necessary to effect such cession of territory, yet such cession is a transaction too important in its consequences, both to *Great Britain* and to subjects of the British Crown, to be established by the above decision attributed to the Secretary of State, or by any uncertain inference from equivocal acts. DAMODHAR GORDHAN *v.* DEORAM KANJI iii. 102

CHAMPERTY—*Maintenance—Agreement for the purpose of Spoil or Litigation—Agreement to acquire an Interest in bonâ fide Litigation—Invalidity of Bond—Duress and Threats.*] The Mofussil Courts of *India*, administering justice according to the broad principles of equity and good conscience, will not apply the English law of champerty and maintenance according to the practice of the English Courts, but they will consider whether a transaction impeached on the ground of maintenance is merely the acquisition of an interest in the subject of litigation *bonâ fide* entered into, or whether it is an unfair or illegitimate transaction got up merely for the purpose of spoil or of litigation; and they will

CHAMPERTY—*continued.*

not allow a stranger to interfere in family affairs by an agreement between him and the real heirs that he should be entitled to a share of the estate.—Case of *Fischer* v. *Kamala Naikber* (8 Moore's Ind. Ap. Ca. 170) distinguished.

A., a stranger, advanced money to enable *B.*, *C.*, and *D.*, childless Hindu widows, upon a false claim of inheritance, to take the estate of the family from *E.*, the rightful heir; *A.* got the entire control of the suit and of the affairs of *B.*, *C.*, and *D.*; and *B.*, *C.*, and *D.* executed an instrument purporting to secure to *A.* a large sum of money upon their obtaining the property, and also gave him their bond for a sum alleged to have been advanced by him.—*B.*, *C.*, and *D.* having agreed with *E.* to withdraw the suit upon terms of compromise, *E.* was induced to enter into a bond to *A.*, by which *E.* in effect engaged to pay to *A.*, in discharge of his claim upon *B.*, *C.*, and *D.*, a fixed sum, which was claimed by *A.* as the amount due to him; and *A.* agreed, to abandon his claim upon them on such payment, retaining the securities he held from them until *E.*'s bond was satisfied.—At the time of entering into this bond, *E.* had only just attained his majority, was without proper counsel or assistance, and was threatened by *A.* with the consequences of not immediately acquiescing in his demand, the threats not being of bodily violence, but of carrying on the suit to his ruin; and such threats overcame his free will, and induced him, contrary to his own judgment and sense of right, and without any evidence that the sum claimed was due, to execute the bond.

On a suit by *A.* to enforce the bond:—*Held*, that the taking of the bond from *E.* did not amount to novation; that the bond was wholly invalid as against *E.*, and could not even be made to stand as a security for what might really have been advanced by *A.* to *B.*, *C.*, and *D.*, as nothing was ever due from *E.* to *A.*, and there existed no privity of contract between them. CHEDAMBARA CHETTY *v.* RENGA KRISHNA MUTHU VIRA PUCHAIYA NAICKAR - - - - i. 241

2. —— *Maintenance—Agreement to supply Funds for Litigation—Share of Litigated Property if Recovered—Privity of Contract.*] The Respondent, as attorney and mooktear of *M.* and his wife, managed actions of ejectment and mesne profits against the Appellants, advanced moneys for that purpose, and for the subsistence of his clients, having stipulated that he should be repaid all advances with interest at 12 per cent., and should have a third part of "the clear net profits" of the suit, with a right to possession of the land recovered as security therefor. He was neither an original nor an added party to the said suits, which, on appeal, were decreed in favour of *M.* and his wife by the High Court, but were afterwards dismissed by the Privy Council with costs, which *M.* and his wife were utterly unable to pay. Pending that appeal, the Respondent purchased the property in suit, and thereafter conducted the appeal in his own interest.

In an action by the Appellants against the Respondent to recover the amount of the said costs, it was averred, but not proved, that the actions were brought or instigated by the Res-

CHAMPERTY—*continued.*

pondent maliciously and without probable cause; and, failing such proof, it was contended (1), that the agreement and acts of the Respondent amounted to champerty, or were otherwise illegal as being against public policy, and that the Appellants had suffered special damage from them; (2) that the Respondent was the real actor therein, and had an interest in them, and was, therefore, responsible for the costs:—*Held*, that the English laws of maintenance and champerty are not of force as specific laws in *India*.

A fair agreement to supply funds to carry on a suit in consideration of having a share of the property, if recovered, ought not to be regarded as being *per se* opposed to public policy. But agreements of such a kind ought to be carefully watched, and when extortionate, unconscionable, or made for improper objects, ought to be held invalid.—Whatever the rights of the parties to this agreement, it does not constitute a punishable offence, and cannot give to the Appellants, who were strangers to it, a right of action against the Respondent.—Such agreement created no legal privity between the Appellants and the Respondent from which a promise can be implied on the part of the Appellants to pay the Respondent his costs of the former action, on which an action of contract can be founded: nor does it establish a legal wrong, for the former action was brought without improper motives, and upon reasonable cause.

An action cannot be maintained against a third person on the ground that he was a mover of and had an interest in a suit, in the absence of malice and want of probable cause.—*Cotterell* v. *Jones* (11 C. B. 735) approved. RAM COOMAR COONDOO *v.* CHUNDER CANTO MOOKERJEE iv. 23

3. —— *Extortionate Agreements to share the subject of Litigation—Maintenance.*] The English law of champerty is not in force in *India*, and agreements to share the subject of litigation, if recovered, are not in themselves opposed to public policy. But when such agreements are extortionate and inequitable effect should not be given to them, although compensation for legitimate expenses may properly be awarded. KUNWAR RAM LAL *v.* NIL KANTH - - xx. 112

4. —— *Excessive Compensation — Maintenance.*] Where the Plaintiffs had, in the belief that the Defendant's claim to an estate was well founded, advanced the funds necessary to enable him to prosecute a successful appeal to the Privy Council, and the High Court held that the reward stipulated for was in the circumstances excessive and unconscionable, and gave a decree for the amount of moneys actually advanced with interest thereon:—*Held*, that such a decree would not be reversed unless shewn to be clearly wrong.—*Ramcoomar Coondoo* v. *Chunder Canto Mookerjee* (Law Rep. 4 Ind. Ap. 47) followed. RAJAH MOKHAM SINGH *v.* RAJAH RUP SINGH - - - - - xx. 127

CHANGE IN THE COURSE OF THE RIVER
See ACCRETION. 2. [vi. 211

CHARGE OF FRAUD AMENDED AFTER EVIDENCE TAKEN - - xiv. 111
See FRAUD. 3.

CHARGE ON IMMOVEABLE ESTATE [xix. 234; xiv. 137
See LIMITATION. 3, 37.

CHARGE ON JOINT ESTATE - - xvi. 115
See HINDU LAW. 63.

CHARGE ON SEPARATE ESTATE OF SONS
See HINDU LAW. 63. [xvi 115

CHARITABLE BEQUEST - - iii. 32
See WILLS. 3.

CHARITABLE TRUSTS - - - ix. 86
See TRUSTS. 2.

CHARITABLE USES - xvii. 28; xix. 170
See MAHOMEDAN LAW. 23, 24.

CHILDLESS WIDOWED DAUGHTER - ii. 113
See HINDU LAW. 76.

CHUR LAND - - - - v. 164
See OCCUPANCY RIGHTS. 1.

CHUTIA NAGPUR ENCUMBERED ESTATES ACT, 1876 (VI. of 1876) - xvi. 221
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CIRCULAR ORDER NO. 112 IN PUNJAUB
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CIVIL PROCEDURE CODES.
See Cases collected under ACT VIII. OF 1859, ACT X. OF 1877, AND ACT XIV. OF 1882

COLLATERAL INHERITANCE - xii. 137
See HINDU LAW. 1.

COLLATERAL SUCCESSION OF ADOPTED SON [viii. 229; xii. 137
See HINDU LAW. 10, 11.

COLLECTOR'S ORDER OF EXEMPTION [xvii. 57
See SALES FOR ARREARS OF REVENUE. 3.

COLLECTOR'S PAYMENT OF RENT TO ADVERSE CLAIMANT - - ix. 99
See ADVERSE POSSESSION.

COLLECTOR'S REPORTS - - - i. 209
See EVIDENCE. 2.

COLLUSION - - - - xi. 211
See FRAUD. 2.

COMMITTEE OF PAGODA - - xiv. 160
See RELIGIOUS ENDOWMENTS. 7.

COMMON CARRIERS — *Indian Contract Act*, 1872—*Carrier's Liability.*] The obligation imposed by law on common carriers is not founded upon contract, but on the exercise of public employment for reward:—*Held*, that the liability of common carriers in *India* is not affected by the *Indian Contract Act*, 1872. The written law relating to that liability is untouched by the Act; the unwritten law was not within its scope. IRRAWADDY FLOTILLA COMPANY *v.* BUGWANDASS [xviii. 121

COMPENSATION - - viii. 90; xx. 80
See LAND TAKEN COMPULSORILY. 1, 3.
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COMPROMISE BY FATHER - - viii. 190
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CONCEALMENT OF FACTS - - ix. 70
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See HINDU LAW 37.

CONDITION AGAINST ALIENATION viii. 210
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CONDITION, SUBSEQUENT - - viii. 46
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CONDITIONAL ADOPTION - - xvi. 53
See HINDU LAW. 12.

CONDITIONAL GIFT OVER - - viii. 46
See HINDU LAW. 110.

CONDITIONAL GRANT - - xvii. 201
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CONSTRUCTION OF MAHOMEDAN WILLS [viii. 117; xii. 159
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CONSTRUCTION OF REGRANT - iii. 259
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—— - - - - - - v. 1; xvi. 71
See OUDH LAW. 4, 15.

CONSTRUCTION OF WAKFNAMAH xvii. 28
See MAHOMEDAN LAW. 23.

CONSTRUCTION OF WILLS.
See Cases under WILLS. 1—5.

CONSTRUCTION OF WILLS IN OUDH.
See OUDH LAW. 22—24.

CONSTRUCTIVE CHANGE OF POSSESSION
See MAHOMEDAN LAW. 1. [ii. 87

CONTEMPORANEOUS ADVANCE - xix. 15
See INSOLVENCY. 3.

CONTEMPT OF COURT - - - x. 171
See HIGH COURT. 1.

CONTINUING CAUSE OF ACTION - vi. 114; [vii. 240
See LIMITATION. 9, 22.

CONTRACT — *Contract by Correspondence — Indian Registration Act*, 1866.] *A.* held debentures of *B.*, a municipal body, and had a right to exchange them for lots of equal value, to be

CONTRACT *continued.*

selected by him from building lands belonging to *B.*; the rent of which lots was to be set off against the interest on the debentures. *A.* notified to *B.* that he had selected certain lots, and asked permission to retain the debentures for a time, setting the interest against the rent. *B.* consented to *A.'s* proposal, and at the same time informed *A.* that the selected lots exceeded the value of his debentures, and that he must pay the difference. *A.* made no reply to this communication.—*A.* afterwards sued *B.* for interest on the debentures: *Held*, that *A.* was not entitled to interest, the contract being complete, and the indication by *B.* of the difference in quantity not amounting to an introduction of a new term into the negotiation. -A correspondence between *A.* and *B.* amounted to a contract for a purchase of a future interest in immoveable property:—*Held*, that such correspondence did not require registration under the *Indian Registration Act*, 1866. PORT CANNING LAND, INVESTMENT, RECLAMATION, AND DOCK CO. *v.* SMITH - - - - i. 124

2. —— *Agreement of Partnership—Dissolution—Partner claiming Compensation against his Firm.*] By an agreement dated the 10th of June, 1857, the Appellant and others entered into a partnership for the purpose of establishing a factory for the manufacture of cotton twist; and thereby entrusted the whole management of the said factory to the Appellant during his life. The 4th clause thereof ran as follows: All we shareholders having agreed to make this settlement, that in return for the trouble you have been at in getting up this factory we have appointed you for your life the agent or broker of this factory, as to that it is to be understood as follows: Whatever cotton may have to be purchased for this factory do you purchase; and whatever yarn may be made in this factory all that do you sell; and for whatever you may sell on account of the factory do you duly receive from this company the commission at the rate of 5 per cent. during your lifetime." A decree for dissolution and winding-up of the said co-partnership having been obtained by some of the co-partners on the ground that the same could not be carried on profitably; the Appellant contended that he was entitled to compensation in respect of his said engagement:—*Held*, that there being no agreement by the co-partners to renounce their right of dissolution, or to pay compensation if they exercised such right; even if the partnership were originally intended to exist during the Appellant's life, the Appellant was not entitled to compensation. COWASJEE NANABHOY *v.* LALLBHOY VULLABHOY AND OTHERS [iii. 200

3. —— *Agreement by Agent under Duress—Imprisonment under arbitrary Rule is Duress.*] The agent of the Respondent while in custody upon a charge of stealing timber, and in order to get rid of that charge, made an agreement to purchase the said timber from the Appellant on behalf of his principal at a price considerably beyond its value:—*Held*, that the Respondent might repudiate the agreement, as having been made by his agent without authority and when under duress; and was entitled to recover as damages certain moneys paid, and the value of

CONTRACT—*continued.*

certain elephants delivered thereunder, less the value of the Appellant's timber, of which the Respondent obtained or might have obtained possession.—*Semble*, although by the law of *England*, if a man is under lawful imprisonment for a civil debt, an agreement which he makes while subject to that constraint is not by reason of his being so subject to it capable of being avoided, provided that it is not unconscionable; yet imprisonment in a country where there is no settled system of law or procedure, and where the judge is invested with arbitrary powers, is duress which will avoid a contract made under such circumstances. MOUNG SHOAY ATT *v.* KO BYAW iii. 61

4. —— *Ikrarnamah—Suit to set aside Agreement.*] In this case, an ikrarnamah whereby the three Plaintiffs (two of them being under age) parted with half of their property, without consideration, whilst not fully acquainted with their rights, without professional advice, and during a state of things likely to overawe them and materially affect the free exercise of their will, was set aside. PREM NARAIN SINGH *v.* PARASRAM SINGH AND BHOLONATH SINGH. PREM NARAIN SINGH *v.* ROODER NARAIN SINGH - iv. 101

5. —— *Agreement of Perpetual Tenancy—Evidence—Onus Probandi.*] Where in an action of ejectment between landlord and tenant the Defendant set up that he had been tenant for eighty years at a low and uniform rental, and that a binding agreement for a perpetual tenancy must be inferred therefrom:—*Held*, that such agreement must be proved, or at least that the facts necessarily lead to such inference, which cannot arise where the tenancy was originally granted for a particular purpose and presumably ceased on its failure. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* MAHARAJAH LUCHMESWAR SINGH - - - - - xvi. 6

—— - - - - - iii. 194

See CAUSE OF ACTION. 5.

—— - - - - ii. 241; xvii. 98

See MORTGAGE. 1, 3.

—— - - - - - xvi. 60

See MARINE INSURANCE.

CONTRACT BY CORRESPONDENCE - i. 124

See CONTRACT. 1.

CONTRACT BY DISQUALIFIED PROPRIETOR

See RATIFICATION. 2. [xvi. 221

CONTRACT OF INDEMNITY - - ix. 64

See ESTOPPEL. 1.

CONTRACT TO DETERMINE BOUNDARIES CONTINGENTLY - - Supp. 34

See RIPARIAN PROPRIETORS. 1.

CONTRACT WITH INDEPENDENT STATE

See PRINCIPAL AND SURETY. [ix. 58

CONTRIBUTION IN RESPECT OF JETTISON

See GENERAL AVERAGE. [xvi. 240

CONVERSION - - - - xix. 60

See PLEDGE.

CONVICTED REBEL - - - i. 167

See FORFEITURE.

COPY OF A DEED - - - xvi. 125

See APPEALS. 6.

COPY OF REGISTERED DOCUMENT - ii. 87
See MAHOMEDAN LAW. 1.

COSTS OF INTERLOCUTORY ORDER - x. 113
See PRACTICE. 34.

COSTS OF RECORD IN PRIVY COUNCIL xii. 16
See ESTOPPEL. 3.

COSTS OF SUIT - iv. 23; x. 113; xiii. 20
See CAUSE OF ACTION. 4.
PRACTICE. 34, 35.

COURT OF COMPETENT JURISDICTION
See RES JUDICATA. 5. [ix. 197
See also JURISDICTION and HIGH COURT.

COURT OF LIMITED JURISDICTION xii. 23
See RES JUDICATA. , 8.

COURT OF WARDS - - - ix. 182
See GUARDIAN. 2.

—— - - - - - xiii. 44
See LUNATIC.

—— - - - - - xvii. 90
See LAND TAKEN COMPULSORILY. 2.

COVENANT - - - - vii. 107
See POTTAHS. 2.

COVENANT TO GIVE WHEN INVALID xv. 149
See HINDU LAW. 28.

COVENANT, WHETHER RUNNING WITH THE LAND - - - Supp. 34
See RIPARIAN PROPRIETORS. 1.

CREATION OF NEW TENURE - - vii. 38
See HINDU LAW. 54.

CREDITOR WITH COMMISSION ON PROFITS
See PARTNERSHIP. [Supp. 86

CRIMINAL CASE, LEAVE TO APPEAL xx. 90
See PRACTICE. 9.

CROSS APPEALS - - - xii. 23
See RES JUDICATA. 8.

CUSTOM—*Proof of Custom—Evidence*] A custom is a rule which in a particular family or particular district has from long usage obtained the force of law. It must be ancient, certain, and reasonable, and being in derogation of the general rules of law must be construed strictly. HURPURSHAD *v.* SHEO DYAL - - - iii. 259

CUSTOM - i. 209; x. 32; xiii. 100; xx. 150
See RELIGIOUS ENDOWMENTS. 1, 5, 6, 9.

CUSTOM AGAINST ALIENATION - viii. 248
See HINDU LAW. 55.

CUSTOM—Araths - - - vi. 238
See PRINCIPAL AND AGENT. 1.

CUSTOM AS TO ALIENATION - xv. 51
See HINDU LAW. 58.

CUSTOM AS TO LIEN - - xviii. 78
See PRINCIPAL AND BANIAN.

CUSTOM AS TO PARTITION - - iii. 259
See OUDH LAW. 10.

CUSTOM AS TO SHIFTING OWNERSHIP [Supp. 34
See RIPARIAN PROPRIETORS. 1.

CUSTOM AS TO SUCCESSION.
See HINDU LAW. 51.
JAIN LAW.
RELIGIOUS ENDOWMENTS. 1, 5, 6, 9.

CUSTOM BARRING INHERITANCE BY ADOPTION - - - - xii. 72
See HINDU LAW. 7.

CUSTOM OF ADOPTION - - xii. 72
See HINDU LAW. 7.

CUSTOM OF PRIMOGENITURE - xvii. 134
See HINDU LAW. 59.

CUSTOMS AMONGST JAINS - vi. 15; v. 87
See JAIN LAW. 1.

CUSTOMS OF THE KANCHANS - xx. 193
See MAHOMEDAN LAW. 7.

CYPRÈS DOCTRINE - - - iii. 32
See WILLS. 3.

DAILY USER BY MUNICIPAL SCAVENGERS
See EASEMENT. 1. [xiii. 77

DAKHILDAR - - - - xvi. 166
See HINDU LAW. 116.

DAMAGES—*Measure of Damages—Value of Goods less Cost of Carriage—Principal and Agent—Agent's Acts within scope of his Duty.*] In estimating the damages for the conversion of Plaintiff's goods, the value of the goods at the place where the principal market for them exists, is the right basis of calculation; but there must be deducted from the price at which they could there have been sold, the cost of conveying them thereto.—*Morgan* v. *Powell* (3 Q. B. 278) approved.

In an action to recover damages from the Defendants for obstructing the Plaintiff's right of ingress and egress to a forest, and his right of obtaining and removing timber therefrom, *held*, on the evidence, that the obstruction was not caused by the persons who were agents of the Defendants for the purpose of working in the forest, or of doing any class of acts analogous to those complained of, and that the Defendants were not shewn to have knowingly adopted or ratified those acts, and that the acts were not shewn to have been committed for their benefit.

A principal is answerable for the act of his agent in the course of his master's business and for his master's benefit, and for every such wrong of the servant or agent as is committed in the course of the service, and for the master's benefit. Though the master may not have authorized the act, if he has put the agent in his place to do a particular class of acts, he must be answerable for the manner in which that agent has conducted himself in doing the business which it was the act of his master to place him in. BURMAH TRADING CORPORATION *v.* MIRZA MAHOMED ALLY SHERAZEE - - - - v. 130

2. —— *Breach of Warranties—Goods objected to after Acceptance — Onus Probandi.*] In an action for damages for breach of warranties in contracts for the sale of good cutch, it appeared that the Respondents accepted the same after a searching examination thereof in *Calcutta*, but afterwards complained of the same when received in *New York* being not according to contract:—*Held*, that the onus was upon the Respondents by very cogent evidence to rebut the inference that

DAMAGES—*continued.*
the cutch accepted in *Calcutta* was according to contract, and that in the absence of any evidence as to its treatment in *Calcutta*, or of its loading, or of the conditions of the voyage, the action must be dismissed. GAN KIM SWEE *v.* RALLI AND OTHERS - - - - - - xiii. 60

3. —— *Zemindar — Tanks — Extraordinary Flood.*] Where it is the duty of the zemindar to maintain the tanks on his zemindary, which are part of a national system of irrigation, recognised by the laws of *India* as essential to the welfare of the inhabitants, and the banks of a tank are washed away by an extraordinary flood without negligence on his part:—*Held*, that the zemindar is not liable for any damage that may be occasioned by the overflow of the water.—*Fletcher* v. *Rylands* (Law Rep. 3 H. L. 330) distinguished. MADRAS RAILWAY COMPANY *v.* ZEMINDAR OF CARVATENAGARUM - - i. 364

—— - - - - - - - ix 1
See EXECUTION OF DECREE. 5.

—— - - - - - - xvii. 17
See EXECUTION SALES. 12.

—— - - - - - ix. 152
See ILLEGAL ARREST.

DAUGHTER - - ii. 113; viii. 99; v. 40
See HINDU LAW. 76, 77, 79.

DAUGHTER'S ESTATE - - - vi. 15
See JAIN LAW. 1.

—— - - - - - - xx. 183
See HINDU LAW. 99.

DAUGHTER'S SON - - - ii. 113
See HINDU LAW. 76.

DAUGHTER'S SON TREATED AS A SON iv. 228
See OUDH LAW 17.

DEAF AND DUMB BROTHER - xviii. 9
See HINDU LAW. 82.

DEATH OF TALOOKDAR BEFORE OCT. 10, 1859
See OUDH LAW. 8. [Supp. 237

DECLARATION BY DONOR - - xvi. 205
See MAHOMEDAN LAW. 4.

DECLARATION IN DECREE - - xii. 166
See DECREE. 7.

DECLARATION OF FUTURE RIGHTS Supp. 47
See HINDU LAW. 31, 105.

DECLARATION OF FUTURE RIGHTS NOT MADE - - - - viii. 46
See HINDU LAW. 110.

DECLARATION OF TITLE BY CIVIL COURT TO FACILITATE RENT SUIT Supp. 165
See DECLARATORY DECREE. 1.

DECLARATION OF TRUST - - viii. 215
See OUDH LAW. 13.

DECLARATION OF TRUST AGAINST GRANTEE
See OUDH LAW. 14. [ix. 41

DECLARATORY DECREE—*Act VIII. of* 1859, *s.* 15—*Consequential Relief—Declaration of Title by Civil Court to Facilitate Rent Suit.*] A merely declaratory decree may be made without granting any consequential relief, or where the party does not actually seek for consequential relief in the particular suit. The Court must see that

DECLARATORY DECREE—*continued.*
the declaration of right may be the foundation of relief to be got somewhere, *e.g.*, in a Court other than that where the declaratory decree is sought. Thus a declaration of title may be made in a Civil Court with a view to the Plaintiff suing under Act X. of 1859, for enhancement of rent in a Revenue Court.—Where a discretion to make such decree is shewn to exist, the Privy Council will not upon light ground interfere with the exercise of that discretion. SADUT ALI KHAN *v.* KHAJEH ABDOOL GUNNEE. KHAJEH ABDOOL GUNNEE *v.* MUSSUMAT ZAMOORUDOONNESSA KHANUM - - - Supp. 165

2. —— *Consequential Relief — Declaratory Decree Discretional—Suit to Declare Void Deeds of Gift and Acceptance of a Child—Adoption.*] A declaratory decree cannot be made unless the Plaintiff would be entitled to consequential relief if he asked for it. Even if he would be so entitled, it is not a matter of absolute right to obtain a declaratory decree. It is discretionary with the Court to grant it or not, and in every case the Court must exercise a sound judgment as to whether it is reasonable or not under all the circumstances of the case to grant the relief prayed for.

A suit to declare null and void certain deeds of gift and acceptance of a child in Hindu adoption, brought by the donee against the donor, the child not being a party to the suit, *held* not to be maintainable. The deeds were not necessary to a valid adoption, and if the deeds were set aside the adoption if it had taken place might be proved *aliunde*. If the deeds operated merely as an agreement to give and take in adoption, and a breach thereof had occurred, such breach would not render the deeds null and void, or constitute any ground for setting them aside or for declaring them null and void. SREE NARAIN MITTER *v.* SREEMUTTY KISHEN SOONDORY DASSEE Supp. 149

3. —— *Suit to Set Aside an Assertion of Title —Act VIII. of* 1859, *s.* 15.] Where a Plaintiff, being in receipt of rents and profits, sued for possession of a share of certain mouzahs under a mál title "by setting aside the false mogolee bromuttur title stated by the Defendants":—*Held*, that such suit, being merely to set aside an assertion, and one in which no relief can be granted, is not maintainable. Sect. 15 of Act VIII. of 1859 gives a right of obtaining a declaration of title only in those cases where the Court could have granted relief if relief had been prayed for. RAJAH NILMONY SINGH *v.* KALLY CHURN BATTACHARJEE [ii. 83

4. —— *Declaratory Decree Reversed—Consequential Relief—Act VIII. of* 1859, *s.* 15—15 *& 16 Vict. c.* 86, *s.* 50.] In a suit by the Respondent for a declaratory decree to the effect that he was entitled as next heir after the death of the first Appellant to the *Shivagunga* zemindary, for immediate part possession and management thereof, for maintenance, and for other relief in respect of waste committed by several of the Appellants, the Courts in *India* held, after the case with regard to relief had totally failed, that the Respondent was entitled to a decree declaratory of his title as next heir:—*Held*, by the Privy Council, that such decree must be reversed.

DECLARATORY DECREE—*continued.*

The application of sect. 15 of Act VIII. of 1859 must be governed by the same principles as those upon which the Court of Chancery proceeds in reference to 15 & 16 Vict. c. 86, s. 50, with such slight modifications as may be required by the different circumstances of *India* and the different constitution of the Courts in that country.

A declaratory decree cannot be made unless there be a right to consequential relief capable of being had in the same Court, or, under special circumstances as to jurisdiction, in some other Court. STRIMATHOO MOOTHOO VIJIA RAGOONADAH RANEE KOLANDAPUREE NATCHIAR, *alias* KATHAMA NATCHIAR *v.* DORASINGA TEVER, *alias* GOWRY VALLABA TEVER - - - - ii. 169

5. —— *Cause of Action—Obstruction to Title.*] A right to come to the Court to have a document or act (*e.g.*, a claim under a nuncupative will) which obstructs the title or enjoyment of property cancelled or set aside, or for an injunction against such obstructions, would be sufficient to sustain a declaratory decree. SHEO SINGH RAI *v.* MUSSUMAT DAKHO - - - v. 87

6. —— *Hindu Law—Declaratory Suit by Reversioner—Act IX. of* 1871, *art.* 124—*Hindu Widow's Accumulations—Hindu Widow's Release to Daughter.*] *Held*, in a suit instituted before the *Specific Relief Act* (Act I. of 1877), that although as a general rule a Plaintiff cannot obtain a declaratory decree unless he shews title to some consequential relief, yet it is subject to exceptions. A suit during the life of a Hindu widow by a Hindu entitled to the possession of land at her death to have an alienation made by the widow declared to be void except for her life is within such exceptions. Such a suit is recognised by law (see Act IX. of 1871, art. 124), and a strong case of inexpediency must be shewn to justify a Court in refusing declaratory relief therein. Such refusal should be made in a preliminary stage of the litigation, not by the Court of Appeal after issues of fact and law have been decided.

A widow's unexpended income from her husband's estate may be held in suspense, or become an accretion to her husband's estate. Where she has invested it and alienated the property so purchased, together with the original estate of her husband, for the purpose of changing the succession, *held*, that accretion was clearly established. *Held*, that a daughter cannot by taking a release from her father's widows of their interest in his estate acquire an absolute estate transmissible to her heirs. ISRI DUT KOER *v.* MUSSUMUT HANSBUTTI KOERAIN - - x. 150

7 —— *Act I. of* 1877, *s.* 42—*Declaratory Suit—Evidence.*] Where the Respondents sued under Act I. of 1877, sect. 42, for declarations that they, as the mutawallis or managers of the *Bisram Ghât*, were entitled to one-third of the donations given by pilgrims to the ghât, and that the Appellants were not entitled thereto as the sole owners, and for consequential relief:—*Held*, reversing the judgment of the High Court, that the suit was rightly dismissed. Even if the evidence shewed that the Plaintiffs had some rights in the ghât, they had failed to prove the particular rights which they alleged, or their title to the particular relief claimed. MAINA *v.* BRIJ MOHAN [xvii. 187

—— - - - - - - - v. 149

See RES JUDICATA. 4.

—— - - - - - - v. 87

See JAIN LAW. 2.

DECLARATORY DECREE DISCRETIONAL [Supp. 149

See DECLARATORY DECREE. 2.

DECLARATORY DECREE REVERSED ii. 169

See DECLARATORY DECREE. 4.

DECLARATORY DECREE OF RIGHT TO PARTITION, EFFECT OF - - vi. 177

See HINDU LAW. 70.

DECLARATORY SUIT - - xvii. 107, 187

See DECREE. 3; and DECLARATORY DECREE. 7.

—— - - - - - xx. 99

See TRESPASSERS. 2.

DECLARATORY SUIT BY REVERSIONER

See DECLARATORY DECREE. 6. [x. 150

DECREE—*Suits for Exclusive Possession.*] Where each of two zemindars failed in separate suits instituted for that purpose to prove a title to the exclusive possession of a piece of water as a portion of his estate, but there was cogent evidence of possession having been enjoyed by both:—*Held*, in a consolidated appeal, that the decrees of the Courts below dismissing the suits were erroneous, and that each of the zemindars should be declared entitled to an equal moiety of the property in dispute, opposite to and adjoining their respective zemindaris, with possession accordingly. KHAGENDRA NARAIN CHOWDHRY *v.* MATANGINI DEBI . - - - xvii. 62

2. —— *Suit for Confirmation of Possession.*] Where a suit is brought for confirmation of possession and the setting aside of deeds by a person alleging himself to be in possession and to be heir, and he proves his heirship and that the deeds ought to be set aside, but fails to prove possession, the decree cannot be for confirmation of possession, but it should direct the deeds to be set aside, and should not be limited to a declaration of the Plaintiff's title as heir. TAGOORDEEN TEWARRY *v.* NAWAB SYED ALI KHAN - i. 192

3. —— *Declaratory Suit.*] Where the only object of a declaratory suit was to prevent the Defendant who claimed property under an alleged adoption and alienation from obtaining possession after the Plaintiff's death:—*Held*, that it was properly dismissed. RANI PIRTHI PAL KUNWAR *v.* RANI GUMAN KUNWAR xvii. 107

4. —— *Mortgage—Suit by Purchaser—Parties.*] A mortgagee holding two mortgages of the same property, sells under the second mortgage to the Plaintiff, and subsequently under the first mortgage to his son benamee for himself:—*Held*, in a suit against the mortgagee and the benameedars that the Plaintiff was entitled to set aside this second sale, and to redeem, but that, the mortgagor not being a party, the Court was wrong in introducing into the decree a declaration to the effect that the Plaintiff was

DECREE- *continued.*

entitled "as second mortgagee," and had not acquired the equity of redemption belonging to the mortgagor—Such a declaration should in appeal be struck out as embarrassing to the Plaintiff's title, at the expense of the Respondent who resisted. CHOORAMUN SINGH *v.* SHAIK MAHOMED ALI - - - - - - - ix. 21

5. —— *Evidence—Admission by Defendant.*] It is a very dangerous thing for a Court to decree in favour of a Plaintiff merely upon alleged verbal admissions by the Defendant of a sum due, without the most clear and cogent proof of such admissions, especially when the Plaintiff shrinks from bringing his accounts into Court. LALLA SHEO PERSHAD *v.* JUGGERNATH - x. 74

6. —— *Construction of Decree.*] Case in which it was held that a decree of a District Judge was on its true construction rightly treated as his decree, though in some of its terms it purported to amend a decree of the Subordinate Judge, and was rightly carried into execution by the District Judge. His jurisdiction so to do could not properly be questioned on a more application to him for postponement of an execution sale.—Costs occasioned by the introduction of unnecessary and irrelevant matter into the record disallowed. BISHENMUN SINGH *v.* LAND MORTGAGE BANK OF INDIA - - - - - - - xii. 7

7. —— *Act X. of* 1877, *s.* 566—*Issues—Declaration in Decree.*] In a suit to set aside certain orders of the collector, and for registration of the Plaintiff's name in zemindari right after cancelling those of the Defendants, the latter set up forged deeds in support of their alleged zemindari right. The High Court, thereupon, while decreeing for the Plaintiff, declared that the Defendants were putnidars, founding this declaration upon certain statements in the Plaintiff's documentary evidence, no such claim having been put forward by the Defendants, and no issue to that effect having been raised:—*Held*, that the High Court had no power to make such declaration.—Sect. 566 of Act X. of 1877 does not apply where an issue has not been raised in the lower Court. OFFICIAL TRUSTEE OF BENGAL *v.* KRISHNA CHUNDER MOZOOMDAR - - - xii. 166

DECREE AGAINST HINDU DAUGHTER REPRESENTING THE ESTATE xx. 183
See LIMITATION. 40.
HINDU LAW. 99.

DECREE AGAINST SEBAIT - - ii. 145
See RELIGIOUS ENDOWMENTS. 2.

DECREE AGAINST WIDOW xi. 59; xv. 195:
See HINDU LAW. 104, 92, 99. [xx. 183

DECREE AS TO PRESENT POSSESSION xv. 186
See RES JUDICATA. 16.

DECREE AS TO VALIDITY OF WILL xv. 159
See RES JUDICATA. 15.

DECREE DECLARING WILL REVOKED xv. 113
See RES JUDICATA. 13.

DECREE FOR ACCOUNT - xviii. 6; xiii. 123
See PRACTICE. 8.
PRINCIPAL AND AGENT. 3.

DECREE FOR MONEY - - - xi. 59
See EXECUTION OF DECREE. 7.

DECREE FOR PARTITION, EFFECT OF v. 228
See HINDU LAW. 69.

DECREE FOR POSSESSION - - iv. 15
See MORTGAGEE. 2.

—— - - - - - xviii. 65; xix. 69
See RES JUDICATA. 18, 10.

DECREE FOR POSSESSION AS HEIRESS v. 149
See RES JUDICATA. 4.

DECREE-HOLDER'S REMEDIES
[iii. 241; xi. 59
See EXECUTION OF DECREE 3, 7.

DECREE NISI CONFIRMED IN INDIA
See DIVORCE. [Supp. 106

DECREE OF DISMISSAL FOR DEFAULT OF APPEARANCE - - xvii. 150
See EXECUTION OF DECREE. 10.

DECREE ON SPECIALLY REGISTERED BOND
See REGISTRATION. 3. [x. 119

DECREE REFUSING INJUNCTION - xv. 156
See RES JUDICATA. 14.

DECREE REVERSED AFTER EXECUTION SALE - - - - xv. 12
See EXECUTION SALES. 10.

DEDICATION OF PROPERTY xvii. 28; xix. 170
See MAHOMEDAN LAW. 23, 24.

DEDICATION TO CHARITY - - ix. 86
See TRUSTS. 2.

DEED OF AUTHORITY TO ADOPT - viii. 229
See HINDU LAW. 16.

DEED OF COMPROMISE - - - - xx. 9
See DEEDS. 6.

—— - - - - - xii. 91
See MAHOMEDAN LAW. 5.

DEED OF GIFT - - - - xi. 164
See HINDU LAW. 29.

—— - - - - - viii. 25
See MAHOMEDAN LAW. 3.

DEED OF GIFT AND ACTS DONE UNDER THE DEED - - - - xi. 164
See HINDU LAW. 29.

DEED OF GIFT WITHOUT POSSESSION INVALID - - - - iii. 291
See MAHOMEDAN LAW. 20.

DEEDS—*Recitals in Deeds—Construction—Operative Part of Deed not to be Defeated by Recital—Mortgage to secure General Balance—Agreement Revocable, its Duration not having been fixed.*] The construction of an ambiguous stipulation in a deed may undoubtedly be governed or qualified by a recital; but on the other hand if the intention of the parties is clearly to be collected from the operative part of the instrument, that intention is not to be defeated or controlled because it may go beyond what is expressed in the recital.—Where on the true construction of the operative part of a mortgage instrument it appeared that the same was intended to cover the general balance that might become due by the mortgagors to the mortgagee in the course of their business transactions:—*Held*, that the security could not be limited by the recital to such portion only of the general debt as consisted of advances made upon contracts for future

DEEDS—*continued.*

delivery of produce, where the words of the recital were not necessarily repugnant to such construction.

Where by an agreement between debtor and creditor prescribing some of the terms on which their future dealings should be carried on, it was provided that an agreed balance should be liquidated by "returns only" made upon future contracts, but the agreement fixed no time for its duration or for such liquidation, or for the extent of business to be done, the result being that if either party were disposed to act unreasonably he would have the means of postponing the liquidation of such balance indefinitely:—*Held*, that such agreement was revocable. It could not be implied from the terms of the agreement that the parties bound and intended to bind themselves to carry on their dealings upon the footing of it until such agreed balance should be liquidated in the manner thereby provided. The parties having abstained from inserting express provisions for the fair and reasonable working of their supposed agreement, the Court would not supply them. PALLIKELAGATHA MARCAR *v.* JOHN GOTHFRIED SIGG - vii. 83

2. —— *Construction—Inconsistent Clauses—Mortgage.*] In construing any instrument it must be taken as a whole, and that construction must be put upon it which will be a reasonable one, and will give effect to all the parts of it. Where a mortgage deed gave an absolute power to the mortgagee to take possession of the whole mortgaged property on non-payment of an instalment when due, and contained another clause directing instead a sale of a sufficient portion to realize the amount thereof, and it appeared that the latter clause could be referred to a contingency, so as not to conflict with the absolute power previously given, *held*, that it must be so construed. DEPUTY COMMISSIONER OF RAE BARELI *v.* LAL RAMPAL SINGH - - - - xii. 1

3. —— *Construction — From Generation to Generation—Naslan-bad-Naslan — Concurrent Findings.*] Where a razinamah provided that an estate should be divided into certain fractions the division to hold good for ever and to descend from generation to generation, naslan-bad-naslan, and its object appeared to be to set at rest disputes as to the absolute proprietary right therein:—*Held*, that according to the true construction and intention of the instrument the shares were to be held in absolute ownership.—Concurrent findings as to the non-existence of an alleged custom will not be re-examined, unless it be shewn that some principle of evidence had not been properly applied, or that the Courts had been led into error upon written documents. THAKUR HARIHAR BUKSH *v.* THAKUR UMAN PARSHAD - - - - - - xiv. 7

4. —— *Construction—"Issue" and "Heirs" used Convertibly—Pensions in Perpetuity.*] By deed in 1838 the King of *Oudh* declared his intention to provide pensions for various members of his family including *M. J.* and her son, and to their heirs in perpetuity.—By treaty in 1842 between the King and the Government of *India* an additional pension was provided for *M. J.* and her heirs:—*Held*, that the words "issue" and "heirs" having been used in the deed as convertible terms the intention of the King must be construed to be that on the death of any pensioner leaving issue, his heirs according to the Mahomedan law of inheritance should receive payment of the pension in the proportion regulated by that law.—*Held*, further, that by the treaty of 1842 the devolution of *M. J.'s* pension was not to be altered, and accordingly the rules of Mahomedan law must be observed.—A grant of pensions in perpetuity, though invalid by the ordinary Mahomedan law, takes effect under a treaty between sovereign powers. NAWAB SULTAN MARIAM BEGUM *v.* NAWAB SAHIB MIRZA [xvi. 175

5. —— *Sunnud—Absolute Grant—Construction—Marginal note in Sunnud, effect of.*] *Held*, with regard to a sunnud in 1803, conferring upon a zemindar, his heirs and successors, an absolute grant of the zemindary, "as then held and possessed by the grantee," that such grant was not limited by the terms of a marginal note in the sunnud, specifying the names of three villages then comprising the zemindary, but operated to pass all lands which could be shewn, either by direct evidence or as matter of reasonable inference, to have been held and possessed by the zemindar at the date of the sunnud.—*Held*, also, that, the zemindar having all along exercised rights of grazing, cutting timber, and collecting mountain produce over the whole area claimed, in part exclusively, in part concurrently with a certain amount of user by the inhabitants of Government villages, such acts of possession must be ascribed to his title, and that the said user not having been in assertion of a conflicting proprietary right, and whether or not sufficient to raise rights of easement, could not displace the zemindar's proprietary title. SECRETARY OF STATE FOR INDIA *v.* NELLAKUTTI SIVA SUBRAMANIA TEVAR - - - - xviii. 149

6. —— *Deed of Compromise—"Rest of your Family"—Maintenance—Construction.*] Where the holder of an impartible raj compromised family disputes by agreeing with the eldest son of his younger brother to give "you every month Rs.300 on account of the maintenance of yourself, your younger brothers, three in all, and the rest of your family":—*Held*, in a suit by the son of the youngest of the three brothers against the son of the rajah, that such payment was not limited to the life of any one brother or of all three, but that the "rest of your family" included the issue of the three brothers, and that a decree in the Plaintiff's favour for maintenance was right. SRI SRI SRI LAKSHMI NARAYANA ANANGA GARU *v.* SRI MADHAWA DEO GARU - - - xx. 9

DEEDS OF GIFT AND ACCEPTANCE OF CHILD
See DECLARATORY DECREE. 2; and HINDU LAW. 2. [Supp. 149; vii. 259

DEFENCE WHICH OUGHT TO HAVE BEEN TAKEN TO FORMER SUIT xvi. 107;
See RES JUDICATA. 17, 19. [xix. 234

DEFINITE INTERESTS UNDER A DEED [xvii. 201
See EXECUTION OF DECREE, 11.

DELAY BY PURCHASER - - xiv. 173
See SPECIFIC PERFORMANCE. 2.

DEMAND AND REFUSAL - - ii. 235
See CAUSE OF ACTION. 2.

DEMAND AND REFUSAL OF DOWER ii. 235
See MAHOMEDAN LAW. 9.

DEMARCATION OF LANDS DECREED xix. 69;
See RES JUDICATA. 10, 18. [xviii. 165

DEMONSTRATION LEGACIES - - xix. 83
See WILLS. 8.

DEPENDENT TALOOK - - - ii. 193
See ENHANCEMENT. 2.

DEPOSIT OF DEBT AND PART OF INTEREST
See MORTGAGE. 7. [xiii. 113

DEPOSIT OF RENT - - - xx. 25
See ENHANCEMENT. 3.

DESAI - - - - - - vii. 162
See DESHGAT WATAN.

DESHGAT WATAN—*Land Tenure—Impartible Estate — Onus Probandi — Desai — Partition.*] Deshgat watan, or property held as appertaining to the office of desai, is not to be assumed *primâ facie* to be impartible. The burden of proving impartibility lies upon the desai; and on his failing to prove a special tenure, or a family or district or local custom to that effect, the ordinary law of succession applies.—A decree for partition of such property should be without prejudice to the desai's right to such emoluments or allowances for the performance of the duties of the desaiship as he may be entitled to under any law in force. ADBISHAPPA BIN GADGIAPPA *v.* GURUSHIDAPPA BIN GADGIAPPA - vii. 162

DESHMUKH—*Deshmukh and Gumastah—Grant of Fees in Deshmukh to Gumastah.*] In a suit by an hereditary deshmukh for a perpetual injunction restraining the Defendant, his gumastah, from receiving certain fees and emoluments belonging to the deshmukh, but entered in the Government papers in the name of the Defendant, it appeared that the Defendant's right as gumastah to act as such and receive the payments had been originally granted by Government to his ancestor, and since hereditarily enjoyed with its assent in such way that he could not be ousted by the Plaintiff:—*Held*, that the Plaintiff had not the right, as against his gumastah, to collect the allowances himself directly, either from the village officers or from the treasury. RAMCHANDRA NARSINGRAJ *v.* TRIMBAK NASAGAR EKBOTE [xix. 39

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See PENSIONS ACT OF 1871. 1.

DEVISE BY COPARCENER OF HIS SHARE
See HINDU LAW. 36. [vii. 18

DEVISE ON CONDITION OF RESIDENCE i. 387
See WILLS. 4.

DEVISE UNDER COLOUR OF RELIGIOUS BEQUEST - - - - iii. 291
See MAHOMEDAN LAW. 20.

DEWUTTER - - - ii. 145; iv. 52
See RELIGIOUS ENDOWMENTS. 2, 3.

DHURMAKARTAH - - - xx. 150
See RELIGIOUS ENDOWMENTS. 9.

DIFFERENT CAUSES OF ACTION—ACT X. OF 1877, ss. 102, 103 - - xv. 156
See RES JUDICATA. 14.

DIFFERENT ISSUE - xv. 186; xviii. 165
See RES JUDICATA. 16, 18.

DIRECTORS OF COMPANY—*Directors' Power to Borrow and Mortgage—Ratification by Company—Directors' Authority in the Future not extended by Ratification of Past Acts.*] By Art. 50 of the articles of association of the *O. R. Company* (which was limited by guarantee, and registered in *Victoria* under a local Act corresponding with the English *Companies Act*, 1862), it was provided that the directors' power of borrowing sums on the credit of the company "should not exceed in the aggregate as an existing debt at the same time one-half of the then actually paid-up capital." The articles contained no restriction upon the company's power of borrowing; and the directors' power to borrow was capable of being extended under Art. 31, by one-half of the votes of all the shareholders given at a general meeting. On the 23rd of December, 1867, the directors obtained a letter of credit, No. 150, for £10,000, and on the 11th of September, 1868, a letter, No. 141, for £5000, and stated to that effect in their report of the 29th of October, 1868, which was ratified at the half-yearly meeting of that date. Letter No. 150 expired on the 29th of March, 1869, but was renewed. On the 9th of September, 1869, the directors obtained another letter of credit, No. 153, for £5000, but this act was never assented to or ratified by the shareholders.

In a suit by the Respondent bank to enforce against the Appellant, as the assignee of the right, title, and interest of the *O. R. Company*, an equitable mortgage which had been granted by the company to secure advances made by the bank, which, with interest, amounted to £15,296, it appeared that half of the actually paid-up capital was never more than £8550; that at the end of 1870 the balance due to the bank was £8; and that the sums claimed in this suit had been advanced in February, 1871, viz., £10,000 under letter No. 150, and £5000 under letter No. 153:—

Held, that the limitation of the power of borrowing and mortgaging contained in Art. 50 was merely a limitation of the authority of the directors conferred by the same article; that it was not a limitation of the general powers of the company, and that the acts of the directors in excess of their authority might be ratified by the company and rendered binding. The ratification of the report of the 29th of October, 1868, did not authorize the directors to obtain a letter of credit No. 153, in September, 1869, or to borrow £5000 thereon in February, 1871. The ratification of letter of credit, No. 150, for £10,000, did not authorize the renewal of it, or the acting upon it after the time originally limited had expired.

Although it might be competent for a majority of shareholders present (though not a majority of the shareholders of the company) at an extraordinary meeting convened for that object, and of which object due notice had been given, to ratify an act previously done by the directors in excess of their authority; yet if the object was to give

DIRECTORS OF COMPANY—*continued.*

the directors in future an extended authority beyond what is given by Art. 50 that could only be effected by a vote of one-half of all the shareholders of the company. The ratification at a half-yearly meeting of a particular act of the directors in excess of authority would not extend the authority of the directors so as to authorize them to do similar acts in future.—*Royal British Bank* v. *Turquand* (5 El. & Bl. 248; 6 E. & Bl. 327) distinguished. IRVINE *v.* UNION BANK OF AUSTRALIA - - - - - - iv. 86

DISABILITIES OF HINDU WIDOW TALOOKDAR - - - - Supp. 220
See OUDH LAW. 7.

DISABILITY OF WARD - - ix. 182
See GUARDIAN. 2.

DISABILITY TO SUE - - - i. 167
See FORFEITURE.

DISPOSSESSION - - - - xvi. 3
See LIMITATION. 43.

DISQUALIFICATION AFTER ESTATE HAS VESTED - - - ii. 113
See HINDU LAW. 76.

DISQUALIFIED PROPRIETOR - iii. 72
See HINDU LAW. 14.

DISSOLUTION OF PARTNERSHIP - iii. 200
See CONTRACT. 2.

DIVORCE—*Act IV. of* 1869, *ss.* 7-17—*Decree nisi confirmed in India—Sentence of Divorce reversed—Concurrent Findings—Limitation—Act XIV. of* 1859, *s.* 1, *cl.* 16.] The Indian *Divorce Act*, No. IV. 1869, sect. 7, provides that in all suits and proceedings brought under that Act, relief is to be given on principles and rules which, in the opinion of the Courts, are as nearly as may be conformable to the principles and rules which the Court for Divorce and Matrimonial Causes in *England* acts on and gives relief. The alleged cause of action arose in 1859 or 1860, the misconduct of the wife having come to the knowledge of the husband in 1862. He took no steps till 1869, when he brought a suit in *India*, under Act No. IV. of 1869, for a divorce *à vinculo*, charging his wife with adultery with the corespondent *A.* and others. The suit was heard in the absence of *A.*, and the wife did not appear. The Court of first instance dissolved the marriage. On appeal to the Chief Court, application was made to hear further evidence, as provided by the 17th section of the Act, which the Court refused, and by its decree confirmed the sentence of the first Court:—*Held*, by the Judicial Committee, that in the absence of *A.*, and the refusal to allow him to be examined to rebut the Plaintiff's case, and considering the inconclusive and unsatisfactory nature of the evidence, coupled with the long delay in bringing the suit, such degree of confirmation could not be maintained, and the sentence reversed with costs, in the Courts below and on appeal.

The reservations contained in the *Limitation of Suits Act*, No. XIV. of 1859, sect. 1, cl. 16, do not apply to suits for divorce *à vinculo*.

Although, as a general rule, the Judicial Committee will not reverse the concurrent findings of

DIVORCE—*continued.*

Courts in *India* on a question of fact, yet there may be circumstances to take such findings out of the scope of the general rule, as in the case of a divorce *à vinculo*, in which, by Act No. IV. of 1868, sect. 17, a decree made by the Court of first instance is only binding on confirmation by the Chief Court, which decree is not to be considered as a separate judgment. HAY *v.* GORDON [Supp. 106

DONEE, "HIS CHILDREN AND GRANDCHILDREN" - - - - v. 138
See HINDU LAW. 27.

DONEE MUST BE IN EXISTENCE WHEN GIFT TAKES EFFECT - - Supp. 47
See HINDU LAW. 31.

DONOR OUT OF POSSESSION - - xi. 218
See HINDU LAW. 30.

DOWER - - - - - -
See MAHOMEDAN LAW. 8—11.

—— - - - - - - xx. 155
See LIMITATION. 35.

DOWER NOT A CHARGE ON DECEASED'S ESTATE - - - - - v. 211
See MAHOMEDAN LAW. 11.

DUES FOR RELIGIOUS SERVICES - vi. 120
See CAUSE OF ACTION. 6.

DURESS AND THREATS - - - i. 241
See CHAMPERTY. 1.

"DURING THE TERM OF THE MOKURRURI" [iv. 223
See POTTAH. 1.

DURMOKURRURI - - - xii. 160
See BENAMEE TRANSACTIONS. 1.

DURPUTNI TENURE - - - ix. 147
See ESTOPPEL. 2.

DUTY OF COURT EXECUTING DECREE iv. 137
See PRACTICE. 36.

DWELLING PLACE - - - vii. 196
See JURISDICTION.

DWYAMUSHYANA - - - v. 4
See HINDU LAW. 5.

EASEMENT—*User of a Passage—Daily user by Municipal Scavengers—Breach of User.*] Where the user of a passage by the Plaintiffs' scavengers three or four times in the year for upwards of twenty years, for the purpose of removing refuse from a privy, was relied upon as establishing the Plaintiffs' right of way:—*Held*, that it was no breach or discontinuance of the user that the Plaintiffs admitted instead of their own the municipal scavengers to whom they were bound by law to afford free access. Nor was a daily user by the latter an aggravation of the servitude, since it appeared to be reasonable and convenient, and no agreement had been shewn specifying times or occasions of access. JUDOO LALL MULLICK *v.* GOPAUL CHUNDER MOOKERJEE [xiii. 77

2. —— *Suit for Injunction—Ancient Lights—2 & 3 Will. 4, c. 71—Acquiescence by Owner of Servient Tenement—Presumption.*] In a suit for an

EASEMENT—*continued.*

injunction praying that the Defendants might be restrained from proceeding with a certain building, and that a portion of it might be taken down, which had the effect of obstructing the light which the Plaintiffs alleged they were entitled to have through their windows, it appeared that the origin of the alleged right had accrued more than twenty years previously, but that before the expiration of twenty years therefrom the owner of the servient tenement commenced the obstruction complained of:—*Held*, that as 2 & 3 Will. 4, c. 71, did not apply, the case must be governed by the English law previous to that enactment; and that as enjoyment for twenty years with the acquiescence of the owner of the servient tenement was not proved, and could not, under the circumstances, be presumed, the suit must be dismissed.—*Quære*, whether acquiescence by the owner of the servient tenement may be presumed from proof of actual knowledge of the obstruction on the part of his agent who collected his rents and fixed their amount. ELLIOTT *v.* BHOOBUN MOHUN BONNERJEE [Supp. 175

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See LIMITATION. 22.

EDUCATION OUT OF JOINT FUNDS - iv. 109

See HINDU LAW. 37.

EJECTMENT - - - - xv. 77

See OUDH LAW. 33.

ELDEST SON - - - - Supp. 1

See HINDU LAW. 51.

EMANCIPATOR OF PURCHASED SLAVE [vi. 137

See MAHOMEDAN LAW. 19.

ENCROACHMENT ON BED OF STREAM [vi. 190

See RIPARIAN PROPRIETORS. 3.

ENGLISH PATENT LAW AMENDMENT ACT, 1852, s. 41 - - - xiii. 134

See PATENT.

ENHANCEMENT—*Land Tenure—Act X. of* 1859, *s.* 15.] In a suit for enhancement it appeared that the rent reserved under a sunnud of A.D. 1775 was 2599 Azeemabadee rupees, and that in lieu thereof from the time of the permanent settlement the sum of 2107 Sicca rupees had been paid until the year 1836, when the said Sicca rupees were converted into the statutable equivalent of 2248 Company's rupees:—*Held*, that this amounted to an agreement between the parties from a period antecedent to the permanent settlement, that the rent paid was the equivalent of the 2599 Azeemabadee rupees; and there being no right of enhancement under sect. 15 of Act X. of 1859, such rent could not now be increased on the ground of error in the original calculation under which the 2599 Azeemabadee rupees had been converted into 2107 Sicca rupees.—Even if there had been any evidence of error the High Court could not, on that ground, in special appeal, alter the decree of the lower Court. MEER MAHOMED HOSSEIN *v.* A. J. FORBES - - - ii. 1

2. —— *Land Tenure—Notice of Enhancement—Dependent Talook—Regulation VIII. of* 1793, *s.* 51.—*Regulation XLIV. of* 1793, *s.* 7.] In a suit brought in the Revenue Court, under Act X. of 1859, to recover rent at an enhanced rate for a dependent talook comprised within the Plaintiffs' zemindary, after notice of enhancement, grounded upon the Defendant's possession of an excess land on a deficient jumma, and that the productive power of that land had increased, it appeared that the talook had been created before the decennial settlement, and was held at a fixed rent, which had not been changed from the time of the permanent settlement. It had, however, been decreed in 1821, in a rent suit, that the jumma of this talook should be assessed at pergunnah rates; and in 1860, in an enhancement suit, that the Plaintiffs were entitled to enhance; but no change in the rate of rent was made by or under either decree:—*Held*, that the rent was not liable to enhancement. The grounds stated in the notice, however applicable to the case of ryots having rights of occupancy, are not applicable to a dependent talook, whose liability to enhancement is regulated by sect. 51 of Regulation VIII. of 1793, and sect. 7 of Regulation XLIV. of 1793. The decrees of 1821 and 1860 did not put the Plaintiffs in a better position than other landlords who previous to the passing of Act X. of 1859 had a good right to enhance, but whose right, if not exercised from the date of the permanent settlement, was taken away by the 15th section of the Act. HURRONATH ROY *v.* GOBIND CHUNDER DUTT - - ii. 193

3. —— *Land Tenure—Deposit of Rent—Bengal Act VIII. of* 1869, *ss.* 31, 46.] In a suit brought for rent at an enhanced rate more than six months after notice of a deposit of rent in Court under sect. 46 of *Bengal Act* VIII. of 1869, it appeared that the deposit had been made before the rent had accrued due:—*Held*, that such suit was not barred by sect. 31. RAJA SURJA KANT ACHARYA *v.* RANI HEMANTA KUMARI DUBI [xx. 25

EQUITY OF MORTGAGEE - - xx. 108

See BENAMEE TRANSACTIONS. 5.

ESCHEAT - - - - - iii. 92

See HINDU LAW. 50.

ESTATE DESCENDIBLE TO A SELECTED HEIR [xi. 135

See OUDH LAW. 23.

ESTATE DESCENDIBLE TO A SINGLE HEIR xi. 51; xx. 77

See OUDH LAW. 16, 18.

ESTATE OF INHERITANCE - i. 268, 282

See POLLIEMS.

ESTATE VESTED IN SON'S WIDOW xvi. 166

See HINDU LAW. 116.

ESTATES INHERITED FROM MATERNAL GRANDFATHER - - ix. 128

See HINDU LAW. 56.

ESTATES IN REMAINDER - - xii. 91

See MAHOMEDAN LAW. 5.

ESTATES OF INHERITANCE - viii. 46

See HINDU LAW. 110.

ESTATES OF INHERITANCE VOID IF INCONSISTENT WITH LAW - Supp. 47

See HINDU LAW. 31.

ESTATES SUBJECT TO DEFEASANCE xvi. 29
See HINDU LAW. 115.

ESTATES TAIL VOID BY HINDU LAW
See HINDU LAW. 31 [Supp. 47

ESTATES WHEN ILLEGAL CANNOT BE CREATED THROUGH TRUSTS Supp. 47
See HINDU LAW. 31.

ESTOPPEL—*Contract of Indemnity—Ambiguity—Secondary Evidence.*] In a suit to establish that an ikrarnamah between the original vendor and vendee of a taluqa was binding on the Defendant, and that he was bound thereunder to indemnify the Plaintiff for the payment of the Government revenue of his (the Plaintiff's) portion of the taluqa; it appeared that the Plaintiff and Defendant respectively derived title from the original vendor and vendee, that the ikrarnamah was not in evidence, but that in a suit between the same parties in estate, relating in a great degree to the same subject-matter, judgment had been given in favour of the Plaintiff's predecessor:—*Held*, that the Plaintiff had failed to prove his case. The judgment in the former case was ambiguous as to the extent and duration of the liability assumed by the vendee, and did not decide that the contract of indemnity should run with the land.—A Court which rejects an original deed as inadmissible, ought not to accept secondary evidence of its contents, and then construe a document which it declines to look at. HIRA LALL *v.* GANESH PERSHAD [ix. 64

2. —— *Dur-putni Tenure—Mortgagor and Mortgagee—Pleading.*] A dur-putnidar defeated a suit for rent brought by his putnidar (who was also zemindar) on the plea that he had parted with his dur-putni interest to his wife and son, who were accordingly sued, and their dur-putni interest sold in execution to the zemindar.—In a suit by the zemindar, suing as dur-putnidar, against his tenant, the Appellant intervened and claimed title to the dur-putni under a mortgage from the former Defendant (made subsequent to the dismissal of the former suit). He alleged that the wife and son were merely benameedars and that he had completed his title by a purchase in execution of a decree obtained on his mortgage:—*Held*, that the Appellant, who admittedly would have been estopped as mortgagee by the plea of his mortgagor from setting up his present claim, was in no better position by reason of his purchase in execution. PORESHNATH MOOKERJEE *v.* ANATHNATH DEB - ix. 147

3. —— *Issue Heard and Decided—Act X. of 1877, s. 13—Costs of Record in Privy Council.*] In a former suit between the same parties, but relating to different property, an issue as to the fact of an adoption was heard and decided:—*Held*, that sect. 13 of the Civil Procedure Code, 1877, barred the trial of that issue in the present suit. An estoppel is binding notwithstanding that the suit which raises it relates to a different property.—Costs occasioned by the introduction into the record of unnecessary and irrelevant matter disallowed RAJAH OF PITTAPUR *v.* SRI RAJAH ROW BUCHI SITTAYA GARU - xii. 16

4 —— *Indian Evidence Act, s. 115—Estoppel by Conduct—Mortgage by Benameedar—Mortgagee*

ESTOPPEL—*continued.*

by Estoppel.] Sect. 115 of the *Indian Evidence Act*, 1872, does not enact as law in *India* anything different from the law of *England* on the subject of estoppel.

It is quite unnecessary in order to create estoppel that the person whose acts or declarations induced another to act must have been under no mistake himself, or must have acted with an intention to mislead or deceive. Estoppel mainly results from the fact that another has been induced, in reliance upon personal representations, acts, or omissions, to act as he otherwise would not have acted.—*Ganga Sahai* v. *Hira Singh* (Ind. L. R. 2 Allah. 809); and *Vishnu* v. *Krishnan* (Ind. L. R. 7 Mad 3) overruled.

Where a son acting as mooktear for his mother who was benamee for his father executed a mortgage on his mother's behalf and in her name, and received the mortgage money, *held* that he was estopped from disputing his mother's title to mortgage, whether he had been aware of its invalidity or erroneously believed it to be valid.—*Held*, further, that where a mortgagee has a good title by estoppel, he can give a good title to a purchaser under a mortgage sale, even though the purchase is made with knowledge of the circumstances to which the estoppel applies. SARAT CHUNDER DEY *v.* GOPAL CHUNDER LAHA [xix. 203

5. —— *Estoppel by Representation—Transfer of Property Act, 1882, s. 43.*] Where a Plaintiff sued for possession in right of the next reversionary heir of the last full owner, and for setting aside an absolute deed of sale by his widow and it appeared that his vendor had executed the said deed as general mooktar, executor, and adopted son of the widow, making a general renunciation of title as mooktar, but had after the widow's death derived title from the said reversionary heir:—*Held* (1.) That the Plaintiff and his vendor were not estopped; the fair construction of the vendor's previous deed of sale being that he sold as agent for the widow, and did not represent that he was selling on his own account.—(2.) That the "*Transfer of Property Act*, 1882," sect. 43, was inapplicable, the said vendor not having represented that he was authorized to transfer any other interest than that of his principal. SYED NURUL HOSSEIN *v.* SHEOSAHAI - - - - xix. 221

6. —— *Estoppel by Conduct—Concealment of Title—Sale by Apparent Owner.*] It is a principle of natural equity which must be universally applicable that where one man allows another to hold himself out as the owner of an estate, and a third person purchases it for value from the apparent owner in the belief that he is the real owner, the man who so allows the other to hold himself out shall not be permitted to recover upon his secret title, unless he can overthrow that of the purchaser by shewing either that he had direct notice, or something which amounts to constructive notice, of the real title; or that there existed circumstances which ought to have put him upon an inquiry that, if prosecuted, would have led to a discovery of it. RAMCOOMAR KOONDOO *v.* MACQUEEN AND ANOTHER - - - Supp. 40

7. —— *Estoppel by Representation—Consent*

ESTOPPEL—*continued.*

ment of Prior Charge.] A person who has represented to an intending purchaser of land that he has not a security over that land, and induced him, under that belief, to buy, cannot as against that purchaser subsequently put his security in force. MUNNOO LALL *v.* LALLA CHOONEE LALL AND OTHERS - - - - - i. 144

8. —— *Order on Demurrer—Limitation—Suspension of Statute.*] Where a Defendant had had the benefit of an order on demurrer as a valid adjudication on the Plaintiff's right of suit to recover moveable property in his father's lifetime, *held*, that he was estopped from setting up limitation as a bar and from insisting that such order could have been appealed from as erroneous in law, and that therefore it did not suspend the running of the statute. LAKSHMAN DADA NAIK *v.* RAMCHANDRA DADA NAIK - vii. 18

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See REGISTRATION. 3.

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See HINDU LAW. 86.

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See EXECUTION OF DECREE. 2.

ESTOPPEL BY CONDUCT xix. 203; Supp. 40

See ESTOPPEL. 4, 6.

ESTOPPEL BY JUDGMENT - v. 206; xv. 186

See RES JUDICATA. 3, 16; and other cases collected under RES JUDICATA.

ESTOPPEL BY REPRESENTATION [xix. 221; i. 144

See ESTOPPEL. 5, 7.

EVIDENCE—*Best Evidence—Written Documents.*] It is a cardinal rule of evidence, not one of technicality, but of substance which it is dangerous to depart from, that where written documents exist they shall be produced as being the best evidence of their own contents. DINOMOYI DEDI *v.* LUCHMIPUT SINGH - - vii. 8

2. —— *Admissibility—Collectors' Reports—Madras Reg. VII. of* 1817.] Reports made by collectors, acting under Reg. VII. of 1817, of the *Madras Presidency*, are not to be regarded as having judicial authority where they express opinions on the private rights of parties; but being the reports of public officers made in the course of duty, and under statutable authority, they are entitled to great consideration so far as they supply information of official proceedings and historical facts, and also in so far as they are relevant to explain the conduct and acts of the parties in relation to them, and the proceedings of the Government founded on them. RAJAH MUTTU RAMALINGA SETUPATI *v.* PERIANAYAGUM PILLAI - - - - - - i. 209

3. —— *Wajibularz—Indian Evidence Act,* 1872, *ss.* 35, 48—*Wajibularz in Oudh.*] Wajibularz or village papers made in pursuance of Reg. VII. of 1822, regularly entered and kept in the Office of the Collector, and authenticated by the signatures of the officers who made them, are admissible in evidence under the *Indian Evidence Act*, 1872, s. 35, in order to prove a family custom of inheritance stated therein; or under sect. 48, as the record of opinions as to the existence of such custom by persons likely to know of it. Such records are not invalidated in *Oudh*, because made and kept by the settlement officer or by officers subordinate to him; and not by the collector as required by the Regulation. RANI LEKRAJ KUAR *v.* BABOO MAHPAL SINGH. RANI RUGHUBUNS KUAR *v.* BABOO MAHPAL SINGH [vii. 63

4. —— *Family Pedigree—Act I. of* 1872, *s.* 32.] Where in order to prove a family pedigree a deposition of a deceased mooktar was tendered, but it appeared that he had no special means of knowledge, in fact no other means of knowledge but as mooktar, that he was not a member of the family, or intimately connected with it:—*Held*, that it was not admissible under Act I. of 1872, sect. 32. THAKUR SANGRAM SINGH *v.* MUSSUMAT RAJAN BAI - - - - - - xii. 183

5. —— *Secondary Evidence—Loss of Document—Act I. of* 1872, *s.* 65, *C.*, *ss.* 74, 76.] *Held*, that the loss or destruction of a document not having been proved, secondary evidence was not admissible under clause C., sect. 65, of the *Indian Evidence Act.*—An anumatri-patra is not a public document within sect. 74, and if it were, the only admissible secondary evidence is a copy certified by a public officer under sect. 76. KHRISHNA KISHORI CHOWDHRANI *v.* KISHORI LAL ROY - - - - - - xiv. 71

6. —— *Recital in Deed—Act I. of* 1872, *s.* 83.] Where a mortgage deed, signed by the Defendants or their predecessors in title, specified the quantity of debuttur land in a particular mouzah which should be excluded from its operation:—*Held*, that the admission as to quantity so made was of great weight, and could not be met by shewing that a thakbust map made at a survey prior in date to the mortgage stated a greater quantity of such land, it appearing that the survey was made by an amin appointed to lay down boundaries, but without authority to decide what lands were debuttur.—Sect. 83 of the *Indian Evidence Act*, 1872, does not make *ex parte* statements of proprietors or tenants at such survey evidence as to the character of the holding. SRIMATI BIBI JARAO KUMARI *v.* RANI LALONMONI [xvii. 145

7. —— *Register of Mahomedan Marriage—Act I. of* 1872, *s.* 32.] *Held*, that a register of marriages having been made by a Mujhtahid in the discharge of his professional duty and kept by the Kazi, is admissible and relevant evidence within sect. 32 of the *Indian Evidence Act*, 1872, in a suit to recover dower between the parties to a marriage recorded therein:—*Held*, upon all the evidence in the case, including the said register, that the High Court was in error in reversing the decree of the lower Court to the effect that the stipulation dower was Rs.50,000, and that the Plaintiff was entitled thereto. ZAKIRI BEGUM *v.* SAKINA BEGUM - - xix. 157

8. —— *Secondary Evidence—Loss of Document—Reg. XX. of* 1812, *s.* 2, *cl.* 15.] *Held*, with regard to a hibbanamah of which a document purporting to be a copy from the registry had been tendered in evidence, that such copy was inadmissible as statutory evidence under Reg XX. of 1812, sect. 2, cl. 15, the original not having

EVIDENCE—*continued.*

been proved to be "lost, destroyed, or not forthcoming," nor any proof given by the subscribing witnesses that the original had been duly executed. AMEEROONNISSA KHATOON *v.* ABEDOONNISSA KHATOON - - - - ii. 87

9. —— *Judgment on Evidence—Tank, Repairs of.*] Case in which the Plaintiffs claimed to be entitled to repair a tank at their own expense, to the exclusion of the rest of the village, and in which their Lordships *held* on the evidence that the tank was the common property of the village, and that no class of the villagers had any right to exclude the rest from contributing to the repairs. SIVARAMAN CHETTI *v.* MUTHIA CHETTI [xvi. 48

10. —— *Judgment on Evidence—Promissory Note.*] Case in which it was held on the evidence and a discussion of surrounding probabilities that the First Court was in error in finding that a promissory note sued upon had been executed by the Defendant. HURRICHURN BOSE *v.* MONINDRA NATH GHOSE - - xix. 4

11. —— *Judgment on Evidence—Moneys Lent.*] Case in which the evidence of a claim against a deceased rajah's estate, founded upon money advanced on a parwana alleged to have been executed by him, was held, overruling the first Court, insufficient to establish the transaction. LACHMI PARSHAD *v.* MAHARAJAH NARENDRO KISHORE SINGH BAHADUR - - - xix. 9

12. —— *Judgment on Evidence—Execution of Hibbanamah by Purdanashin.*] Case where it was held upon the evidence overruling the judgment of the High Court that a hibbanamah which the plaint alleged to be a forgery was a genuine document, that it was executed by a purdanashin lady, who well knew what she was doing, and was bound thereby. MAHOMED BAKSH KHAN *v.* HOSSEINI BIBI - - xv. 81

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See WILLS. 6, 7.

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See DECLARATORY DECREE. 7.

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See EXECUTION OF DECREE. 6.

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See PRACTICE. 29, 35.

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See DECREE. 5.

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See ISSUES. 1.

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See CONTRACT. 5.

—— - - - - - iii. 259
See CUSTOM.

—— - - - xiii. 70; xiv. 127; xv. 29
See BENAMEE TRANSACTIONS. 2, 3, 4.

EVIDENCE AS TO PAYMENT OF CHEQUE
See BANKER AND CUSTOMER. [xviii. 111

EVIDENCE OF ACTUAL POSSESSION xiii. 160
See BENAMEE TRANSACTIONS. 1.

EVIDENCE OF AGENT'S AUTHORITY vi. 238
See PRINCIPAL AND AGENT. 1.

EVIDENCE OF DEDICATION - - iv. 52
See RELIGIOUS ENDOWMENTS. 3

EXCESSIVE COMPENSATION - - xx. 127
See CHAMPERTY. 4.

EXCLUSIVE USER BY TENANT IN COMMON
See TENANCY IN COMMON [xix. 48

EXECUTION CREDITORS - - xvii. 17
See EXECUTION SALES. 12.

EXECUTION OF BARRED DECREE, VALID ORDER FOR - - viii. 123
See LIMITATION. 19.

EXECUTION OF BOND - - x. 119; xix. 1
See REGISTRATION 3; and ONUS PROBANDI. 6.

EXECUTION OF DECREE—*Execution Sale—Sale of Right, Title, and Interest—Refund of Purchase-money Claimed—Purchase of Contingent Interest which Fails.*] The Appellant's right, title, and interest in a sum of Rs 35,500 deposited with the collector as his share of the surplus proceeds of an estate sold for arrears of revenue, was on the 25th of November, 1867, attached in execution of a money decree, and on the 18th of February, 1868, sold to the Respondents for Rs 8000, which sum was thereupon paid into Court, and distributed amongst the attaching and other execution creditors The revenue sale was subsequently, at the instance of the Appellant, ordered to be set aside, and thereupon the estate was restored to the Appellant and his co-sharers, and the purchase-money restored to the purchasers, including the said Rs 35,500, which the collector, pending the litigation, had refused to pay to the Respondents

In a suit by the Respondents to recover the said Rs 8000, with interest from the date of payment thereof into Court:—*Held* (reversing the decision of the High Court), that the suit must be dismissed. The Respondents had purchased merely the right, title, and interest of the Appellant in the Rs 35,500, and the existence of such right, title, and interest would, to their knowledge, cease, upon the contingency of the revenue sale being set aside. Although the Appellant had benefited by the Rs 8000 paid by the Respondents, there was no obligation on his part, express or implied, to repay the same. Such payment was voluntary, against the will of the party benefiting, and made in the course of a speculative transaction, in which the interest of the Appellant was directly opposed to that of the Respondents. RAM TUHUL SINGH *v.* BISESWAR LALL SAHOO AND SOODISHT LALL - ii. 131

2. —— *Subsequent Mesne Profits—Act XXIII. of* 1861, *s.* 11—*Estoppel.*] The Appellant, having obtained a decree for land with mesne profits thereof up to the date of suit, petitioned in execution proceedings for subsequent mesne profits with interest thereon, and for interest on the amount already decreed. It appeared that, as regards the subsequent mesne profits, the Defendant (pending his appeal) had executed certain security bonds to the Court in which he had undertaken to account in respect thereof in the suit:—*Held*, that such obligation made the accounting in respect thereof "a question relating to the execution of the decree" within the meaning of the latter clause of sect. 11 of Act XXIII. of 1861, and in any case estopped the Defendant from saying that the said mesne profits were not

EXECUTION OF DECREE—*continued.*

payable under the decree.—*Pisani* v. *Attorney-General of Gibraltar* (Law Rep. 5 P. C. 16) approved.—*Held*, as regards the claim for interest, that the Appellant could not recover in this suit. Sect. 11 having been construed by a general *consensus* of the Indian Courts to mean that where a decree is silent either as to mesne profits or as to interest, the same can only be recovered in a separate suit, their Lordships accepted that construction as settled law, whatever their own view might have been had the question been *res integra*. SADASIVA PILLAI *v.* RAMALINGA PILLAI [ii. 219

3. —— *Act VIII. of* 1859, *s.* 243—*Mode of Executing Decree for Money — Decree-holder's Remedies.*] The Appellant having obtained a decree for money, sued to recover the unsatisfied balance thereof from the Respondents, alleging that the property of the deceased judgment debtor (being one-seventh share in the legacy of his father) was in their possession. He prayed that after due inquiry, adjustment of accounts, and the determination of the value of the said legacy out of the share which might be found due to the judgment debtor, the above-mentioned balance might be decreed with interest and costs: —*Held*, that the decree did not vest in the Appellant a right to the property sued for, and consequently that he could not maintain this suit.

The proper mode of enforcing a decree is that pointed out by the Code of Civil Procedure, namely, by execution and sale, or by execution and attachment, and the appointment of a receiver under sect. 243 to collect the property. Where the Legislature has prescribed a particular mode of enforcing a right created by a decree, the possessor of that right is bound to follow the procedure prescribed, and no other. MIRZA MAHOMED AGA ALI KHAN BAHADOOR *v.* THE WIDOW OF BALMAKUND - - - - iii. 241

4. —— *Procedure in Execution—Act VIII. of* 1859, *s.* 208—*Act XXIII. of* 1861, *s.* 11—*Issue of Legitimacy.*] The widow of a decree-holder, having been substituted on the record under sect. 103 of Act VIII. of 1859 for the purpose of prosecuting an appeal, applied for execution on behalf of herself and as guardian of her infant son, whose legitimacy as a son of the deceased decree-holder was disputed and eventually decided in such execution proceeding, and obtained a declaration that she was entitled to execute the whole of her decree against the judgment debtor.—In a suit by the widow of the judgment debtor to set aside this judgment, *held*, that the above issue of legitimacy had not been decided by a competent Court in a competent proceeding.—Neither sect. 208 of Act VIII. of 1859, nor sect. 11 of Act XXIII. of 1861 authorized the Court to try the above issue of legitimacy in an execution proceeding, the infant son not having been a party to the suit in which the judgment was passed. ABEDOONISSA KHATOON *v.* AMEROONISSA KHATOON - - - - iv. 66

5. —— *Mesne Profits—Interest on Mesne Profits—Damages.*] Mesne profits and the interest thereon are two distinct subjects. The former include the amount which may have been received from land, deducting the collection charges.

EXECUTION OF DECREE—*continued.*

The loss of interest year by year thereon is merely damages sustained by a Plaintiff who has been prevented from receiving the profits as they became due. The Court, in execution, cannot exceed the terms of the decree by awarding interest year by year. Costs disallowed, untenable grounds of appeal as to the amount of mesne profits having been put forward in order to bring the case within the rule as to value which authorizes an appeal as of right HURRO DOORGA CHOWDHRANI *v.* MAHARANI SURUT SOONDARI DEBI - - - - - ix. 1

6. —— *Evidence—Uncertified Copy of Decree —Act X. of* 1877, *ss.* 588, 610—*High Court Charter*, 1865, *s* 15.] Where the effect of a Privy Council judgment was that each of two Plaintiffs was entitled to recover a moiety of a certain estate in possession of the Defendant, and Defendant purchased the share of one Plaintiff:—*Held*, that the decree could be executed in part by the co-Plaintiff according to the extent of her interest in the estate under the decree.—The provisions of sect. 610 of Act X. of 1877 cannot be construed as restricting the only possible evidence required to be produced by a petitioner to a certified copy, but as directory words with the object of insuring that proper information upon the subject of any Order in Council should be supplied to the Courts in *India*. Accordingly, if one of the parties neglects to file the original decree, a copy, though not certified, may be admitted in evidence.—Whether or not an order under sect. 610 is a ministerial proceeding, if a judicial discretion is exercised thereunder, it may amount to a judgment under sect. 15 of the charter of 1865, so that an appeal will lie. If in such exercise of judicial discretion a Judge usurps jurisdiction, that alone would be a valid ground of appeal.—Sect. 588 of Act X. of 1877 does not apply so as to prevent an appeal from one of the Judges of the High Court to the full Court. HURRISH CHUNDER CHOWDHRY *v.* KALI SUNDARI DEBIA x. 4

7. —— *Decree for Money — Decree-holder's Remedies—Limitation—Act IX. of* 1871, *art.* 118.] The Plaintiffs having recovered a money decree against *M.'s* widow for the wrongful conversion of their timber by *M.*, attached in execution the property of the Defendant *M.'s* brother, and upon such attachment being disallowed sued to establish their right to execution against the detached property upon the ground that the Defendant had benefited by the timber taken by *M.* and after *M.'s* death had sold the same and appropriated the money:—*Held*, that the Plaintiffs had a right to follow the proceeds of the timber, and that the Defendant having received the money and not having paid it over to *M's* widow, they had a right to recover the amount from him: —*Held*, with regard to limitation, that under Act IX. of 1871, art. 118, the Plaintiffs had a right at any time within six years from the time when the Defendant received the money, to hold him responsible to them for the amount. GOOROO DAS PYNE *v.* RAM NARAIN SAHOO - xi. 59

8. —— *Order in Execution Proceedings—Res Judicata—Appeal.*] A Judge having decided in the course of execution proceedings that a decree according to its true construction provided for

EXECUTION OF DECREE—*continued.*

interest on the decretal money at twelve annas per cent. after as well as before the expiration of two years from the date thereof, and such decision not having been appealed from:—*Held*, that the High Court could not at a later stage of the execution proceedings set aside such order and disallow interest after the said two years had expired.—*Ram Kirpal Shukul* v. *Mussumat Rup Kuari* (*ante*, p. 37) followed. BANI RAM *v.* NANHU MAL - - - - xi. 181

9. —— *Attachment—Political Pension—Act XIV. of* 1882, *s.* 266 (*g*)—*Pensions by Foreign State.*] A monthly allowance which the Government of *India* has given a guarantee that it will pay, by a treaty obligation contracted with another sovereign power, is a political pension within the meaning of Civil Procedure Code, 1882, s. 266 (*g*); and as such is not liable to attachment and sale in execution of a decree.—*Nawab Sultan Mariam Begum* v. *Nawab Sahib Mirza* (Law Rep. 16 Ind. Ap. 175) followed.—*Quære*, whether sect. 266 (*g*) covers pensions payable by a foreign State when remitted for payment to their pensioner in *India*. BISHAMBHAR NATH *v.* NAWAB IMDAD ALI KHAN [xvii. 181

10. —— *Res Judicata—Act X. of* 1877, *s.* 7—*Decree of Dismissal for Default of Appearance—Parties.*] Where by a decree in 1856 certain co-parceners, of whom the Respondents' ancestor was one, were directed to give up possession to the Appellant, and declared liable for mesne profits (whether jointly or severally not being stated), and it appeared that the extent and quality of that liability were not ascertained till 1877 (after the death of the ancestor), when the Appellant for the first time obtained a money decree capable of execution:—*Held*, in a suit by the Respondents for relief against the attachment and sale of their ancestral property in execution of the decree of 1877, that not having been made parties to the proceedings in which such money decree was passed, they were not bound thereby.—A similar suit having been instituted by the Respondents in another Court in regard to other property and dismissed for default of appearance, without any of the questions raised by the pleadings being heard and determined:—*Held*, that such dismissal did not operate as *res judicata* in respect of the questions of fact or law raised in this suit, the severest penalty enacted by the Code of Civil Procedure, c. 7, being that another suit for the same relief was barred. MAHARAJA RADHA PARSHAD SINGH *v.* LAL SAHAB RAI [xvii. 150

11. —— *Act X. of* 1877, *s.* 266—*Definite Interests under a Deed—Expectancies.*] Where definite interests are taken under a deed, similar to vested remainders, though contingently liable to be displaced:—*Held*, that such interests are liable to attachment, not being mere expectancies within the meaning of Civil Procedure Code, sect. 266. AMEECHUNDER SIRCAR *v.* MUSSUMMAT ZAHOOR FATIMA - - - xvii. 201

12. —— *Setting aside Execution Proceedings.*] In execution proceedings the Court will look at the substance of the transaction and will not be disposed to set aside an execution upon mere

EXECUTION OF DECREE—*continued.*

technical grounds when they find that it is substantially right. BISSESSUR LALL SAHOO *v.* MAHARAJAH LUCHMESSUR SINGH - vi. 233

EXECUTION OF DEED - i. 192; viii. 39; [xviii. 144

See ONUS PROBANDI. 1, 2, 4.

—— - - - - viii. 8; xix. 196

See HINDU LAW. 90, 97.

EXECUTION OF DEED OF SALE BY GUARDIAN - - - - xvi. 96

See MAHOMEDAN LAW. 12.

EXECUTION OF HIBBANAMAH BY PURDANASHIN - - - - xv. 81

See EVIDENCE. 12.

EXECUTION PROCEEDINGS, ORDER IN xi. 37

See RES JUDICATA. 7.

EXECUTION SALE AFTER CO-PARCENER'S DEATH - - - - vi. 88

See HINDU LAW. 42.

EXECUTION SALE, EFFECT OF, WHEN CO-PARCENERS ARE NOT PARTIES

See EXECUTION SALES. 8. [xiv. 187

EXECUTION SALE OF ANCESTRAL ESTATE [xiii. 1; xv. 99; xvi. 1; xvii. 11

See HINDU LAW. 44, 47, 48, 49.

EXECUTION SALE OF CO-PARCENER'S SHARE - - - - iii. 7

See HINDU LAW. 39.

EXECUTION SALE OF FATHER'S SHARE AFTER HIS DEATH - - vi. 88

See HINDU LAW. 42.

EXECUTION SALE OF FATHER'S UNDIVIDED SHARE iv. 247; xi. 26; xiv. 77, 84

See HINDU LAW. 41, 43, 45, 46.

EXECUTION SALE SET ASIDE - xi. 234

See EXECUTION SALES. 7.

EXECUTION SALE STAYED ON CONDITION

See LIMITATION. 19. [viii. 123

EXECUTION SALES—*Purchaser at Execution Sale—Sale under Erroneous Decree valid.*] Where a Court of Justice has given a decree against a party in favour of a creditor, and has ordered certain property to be set up for sale in execution of the decree, a *bonâ fide* purchaser under the execution, who has paid the purchase-money, is not liable to have the property taken from him on the ground that the decree proceeded upon an erroneous view of the law. GIRDHAREE LALL *v.* KANTOO LALL - - - - i. 321

2. —— *Act. VIII. of* 1859, *ss.* 256, 257—*Material Error in Notification of Sale—Waiver of Objection by Judgment Debtor—Indian High Courts Act, s.* 15—*Confirmation of Sale.*] At a sale held on the 9th of September, 1872, in execution of a decree, the Respondent purchased an estate for Rs.550,000. The notification of sale had stated the Government revenue to be Rs 3146 instead of Rs.8146; the sale being fixed for the 5th of August, 1872. The sale was postponed without the issue of a second notification on an application by the judgment debtor praying for such postponement. "the attachment and the

EXECUTION SALES—*continued.*

notification of sale being maintained."—On the 1st of October, 1872, the judgment debtor objected, under sect. 256 of Act VIII. of 1859, to the sale on the ground of material error in the above notification in regard to the amount of Government revenue. The subordinate Judge overruled such objection, but omitted to pass an order under sect. 257 confirming the sale. Thereupon the judgment debtor paid into Court the amount of the decree, and then obtained from the Judge an order purporting to have been made in review under sect. 376, but without notice to the Respondent, setting aside the sale on the ground of inadequacy of price and the above alleged material error. Subsequently the Judge refused to confirm the sale and to issue a certificate to the Respondent.—The High Court, upon application by the Respondent under 24 & 25 Vict. c. 104, sect. 15, held that the objections made were insufficient, and directed the Judge to confirm the sale:—*Held*, by their Lordships, that, although the alleged inadequacy of price was no ground for refusing to confirm the sale, yet that the above error in specifying the amount of Government revenue was an irregularity (see sect. 249) for which on proof of substantial injury to the judgment debtor therefrom the sale might have been set aside; but that the above petition for postponement amounted to an admission by the judgment debtor that the notification was correct, or that there was no such irregularity as would be likely to mislead. GIRDHARI SINGH *v.* HURDEO NARAIN SINGH - - - - iii. 230

3. —— *Purchaser at Execution Sale—Sheriff's Liability—Suit by Purchaser for Refund against Execution Creditor—Cause of Action.*] *Quære*, can a purchaser at a sheriff's sale under a writ of *fi. fa.*, upon being evicted by the execution debtor, recover the purchase-money from the execution creditor, when the sheriff was without authority to execute the writ at the place where the property was situate, but did so under the authority and by the express direction of the judgment creditor?—*Held*, that such a case was distinguishable from a sale by private contract, and being that of a sale *in invitum*, must be governed by rules peculiar to sheriff's sales:—*Held*, further, that in such case the sheriff undertakes by his conduct that he has seized and put up for sale the property sold in the exercise of his jurisdiction, and the execution creditor must be treated as a principal in the transaction.—Case remanded to be tried whether, on the facts to be proved, a cause of action having been shewn by the plaint, the evicted purchaser was entitled to recover back the purchase-money as money had and received to his use as upon a total failure of consideration, or to any other and what relief. DORAB ALLY KHAN *v.* ABDOOL AZEEZ [v. 116

4. ——*Execution Sale under Act VIII. of* 1859—*Sale of Tenure—Bengal Act VIII. of* 1869, *ss.* 59, 60, 66.] In execution proceedings under Act VIII of 1859, whether the property attached is an under-tenure or an ordinary leasehold interest, only the right, title, and interest of a judgment debtor can be sold; while by virtue of a sale of a tenure under sect. 59 of Act VIII. of 1869, the purchaser acquires it, under sects. 59, 60, and 66, free of all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder. DOOLAR CHAND SAHOO *v.* LALLA CHABEEL CHAND AND DOOLAR CHAND SAHOO *v.* LALLA BISHESHUR DYAL - - - - - - vi. 47

5. —— *Alienation of Attached Property—Attachment of Decree for Mesne Property—Set-off of Attached Decree—Attachment of Decree pendente lite.*] Under a private sale by a judgment debtor of property attached in execution, a purchaser acquires no better title than his vendor possesses, that is, he buys subject to any alienation or incumbrance effected since the date of the attachment. Under an execution sale a purchaser acquires title by operation of law adversely to the judgment debtor, and freed from such subsequent alienation or incumbrance.

The Respondent having obtained judgment against *B.* attached, in May, 1863, *B.'s* decree against the Appellants for mesne profits; in May, 1865, obtained an order for sale thereof; and on the 27th of March, 1866, by private deed of sale, purchased the same; *B.* having meanwhile, on the 14th of September, 1865, consented to an order of that date (to which the Respondent was no party), whereby his decree for mesne profits was set off *pro tanto* against a much larger money decree by the Appellants against him:—*Held*, overruling the decision of the High Court, that such private sale though it satisfied the Respondent's judgment, only operated to pass such title as *B.* had in the decree for mesne profits; that is, a title subject to the order of the 14th of September, 1865. Even if the sale had been in execution, *quære* as to the effect of the attachment having been issued *pendente lite* in regard to the right of set-off. DINENDRONATH SANNYAL *v.* RAMCOOMAR GHOSE - - - - - - viii. 65

6 —— *Suit to set aside Execution Sale—Act X. of* 1877, *s.* 311—*Material Irregularity—Substantial Injury*] In order to set aside an execution sale under s. 311 of Act X. of 1877, there must have been material irregularity in publishing or conducting it, and the applicant must further prove substantial injury in consequence of the irregularity:—*Held*, that the not stating the amount of Government revenue in the proclamation of sale is an irregularity which may be properly (*i.e.*, in the Court of first instance) objected to; but if inadequacy of price is relied upon as substantial injury, such injury must be proved, under s. 311, to have occurred in consequence of the irregularity, and cannot be assumed to have so occurred, by the Appellate Court, in the absence of evidence. OLPHERTS AND MACNAGHTEN *v.* MAHABIR PERSHAD SINGH - - - - - - x. 25

7. —— *Execution Sale set Aside—Petition to Postpone Filed in Wrong Court.*] Case where a sale in execution was ordered to be set aside, it appearing that a consent petition for postponement had been on the day of sale, by mistake of the judgment debtor, presented to the wrong Court, and that the decree-holder had in the absence of the judgment debtor allowed the sale

EXECUTION SALES—*continued.*

to proceed, and himself had become the purchaser. GUNGAPERSHAD SAHU *v.* GOPAL SINGH - xi. 234

8. —— *Manager of Hindu Joint Family—Suit against Co-parceners—Effect of Execution Sale when Co-parceners are not Parties.*] The Plaintiff being mortgagee execution creditor and purchaser at an execution sale of the mortgaged property sued the Defendants for a declaration that his purchase included their shares of the mortgaged property and was not limited to the shares of the mortgagors, who as managing members of the joint family to which the Defendants belonged, and of the joint business in which they were interested, had purported to mortgage the interest of the entire family.—The Defendants refused to join issue upon the facts alleged by the Plaintiff shewing that the mortgage validly bound the ancestral estate and business, but pleaded that they were no parties to either the mortgage or the mortgage suit, and that therefore the decree and execution sale, both of which purported to affect the whole estate to which they related, did not affect their interests:—*Held*, that this contention failed, that the case should not be remanded, and that the sale passed the whole estate to which it related DOULUT RAM *v.* MEHR CHAND - xiv. 187

9. —— *Religious Endowment—Parties.*] Where property had been devised to a trustee with the object of providing for certain religious duties, *held*, that neither the whole nor any portion of the *corpus* could be sold in execution of a decree against the trustee personally.—*Held*, further, that in a suit to set aside such execution in which all parties interested are not present, the Court cannot decide as to the extent of the religious trusts, or whether any surplus profit belongs to the trustee, nor allow any specific portion of the *corpus* of the estate to pass to a purchaser as representing such unascertained surplus. BISHEN CHAND BASAWUT *v.* SYED NADIR HOSSEIN. xv. 1

10. —— *Purchase by Decree-holder—Decree Reversed after Execution Sale.*] Decree-holders who purchase under their own decree, which is afterwards reversed on appeal, stand in a different position from strangers who purchase thereunder *bonâ fide*, while the decree and the order for sale are valid. The latter have only to ascertain that the decree and order are valid and they are entitled to retain their purchase; the former lose the benefit thereof on the reversal of their decree. NAWAB ZAINUL-ABDIN KHAN *v.* MUHAMMAD ASGHAR ALI KHAN [xv. 12

11. —— *Act XIV. of* 1882, *ss.* 289, 290, 311—*Material Irregularity—Substantial Injury.*] Sect. 289 of the Civil Procedure Code provides that a copy of a proclamation of sale shall be fixed up in the Court-house after it has been posted in the villages, and, consequently, sect. 290 is not complied with unless the thirty days mentioned therein have elapsed since both fixing and posting have taken place. Such non-compliance is material irregularity within the meaning of sect. 311: but a sale in disregard of sect. 290 is not a nullity, and will not be set aside unless direct evidence of substantial injury resulting from the irregularity has been given. TASSADAK RASUL KHAN *v.* AHMAD HASAIN - xx. 176

EXECUTION SALES—*continued.*

12. —— *Damages—Wrongful Attachment—Execution Creditors.*] Where certain bales of jute belonging to the Respondent and not the judgment debtor had been attached by the Appellants on the 28th of November, 1883, in a suit to which he was not a party, and sold by order of the Court in June, 1884, at a price which, owing to the intermediate fall in the market, was about half of what they were worth at the date of the attachment:—*Held*, that such wrongful attachment being according to the law and practice in *India* the direct act of the Appellants, and not of the officer of the Court, the Respondent was entitled to recover full indemnity, and that he was not bound to prove that the Appellants had litigated maliciously and without probable cause. KISSORY-MOHUN ROY *v.* HURSOOK DASS - - xvii. 17

13. —— *Fraud—Purchaser at Execution Sale—Act XIV. of* 1882, *ss.* 311, 313, 622.] Where a purchaser at a sale in execution alleges that he has been induced by fraud to pay a larger price for his purchase than he otherwise would have done, his remedy is not under sects. 311 to 313 of the Code of Civil Procedure; and the Judge must confirm the sale. A summary order to set it aside may be reviewed under sect. 622. BIRJ MOHUN THAKOOR *v.* RAI UMA NATH CHOWDHRY [xix. 154

14. —— *Act XIV. of* 1882, *s.* 244—*Res Judicata—Auction Purchaser.*] Sect. 244 of the Civil Procedure Code bars a fresh suit in relation to the execution, discharge, or satisfaction of a decree. It does so in terms when the question has arisen between the parties to the suit in which the decree was passed; and it has been rightly held to apply when the question raised concerns the auction purchaser at an execution sale as well as the parties. PROSUNNO COOMAR SANYAL *v.* KASI DAS SANYAL - - - - xix. 166

15. —— *Act XIV. of* 1882, *s.* 311—*Material Irregularity—Substantial Injury.*] Where the judgment debtors allowed the execution sale of the whole of their property to proceed without raising any objection of insufficient description, or to the effect that part ought to have been sold instead of the whole:—*Held*, that the sale could not afterwards be set aside at their instance on those grounds:—*Held*, further, that in all cases of irregularity under sect. 311 of Act XIV. of 1882, evidence must be given of substantial injury having resulted therefrom. T. R. ARUNACHELLAM CHETTI *v.* V. R. R. M. A. R. ARUNACHELLAM CHETTI - - - xv. 171

16. —— *Act X. of* 1877, *s.* 246—*Purchaser at Execution Sale.*] *Held*, that, according to the true construction of sect. 246 of Act X. of 1877, a purchaser under a sale in execution is not bound to inquire whether the judgment debtor had a cross judgment of a higher amount such as would have rendered the order for execution incorrect. If the Court has jurisdiction, such purchaser is no more bound to inquire into the correctness of an order for execution than he is as to the correctness of the judgment upon which execution issues. REWA MAHTON *v.* RAM KISHEN SING - xiii. 106

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See EXECUTION OF DECREE. 1.

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FATHER'S IMMORAL DEBTS.

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FATHER'S POWER TO ASSIGN ANCESTRAL ESTATE BEFORE BIRTH OF SONS [iv. 159

See HINDU LAW. 61.

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See HINDU LAW. 80.

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See MAHOMEDAN LAW. 23.

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See MORTGAGEE. 5, 6, 7.

FORFEITURE—*Confiscation—Convicted Rebel—Act IX. of* 1859, *s.* 20—*Limitation—Disability to Sue.*] *A.* died the ostensible owner of certain lands, leaving two sons under age. Upon *A.'s* death, *B.*, alleging that he was himself the real owner of the lands, caused himself to be recorded as owner in the collector's books, and took possession. Some years later, *B.* was convicted and executed as a rebel, and all the property in his possession confiscated, including the land so taken by him.—The sons of *A.* sued for the recovery of the lands of which they had been dispossessed by *B.*—The suit was brought more than a year after the younger Plaintiff came of age, and more than a year after the passing of Act IX. of 1859, which allows (s. 20) only one year to sue, and does not save the rights of persons under disability:—*Held*, that the claim was barred by limitation. MOHUMMUD BUHADOOR KHAN *v.* COLLECTOR OF BAREILLY AND OTHERS - - - i. 167

—— - - - - - vii. 115

See HINDU LAW. 88.

FORGERY - - - - - xv. 81

See ISSUES. 2.

MAHOMEDAN LAW. 2.

FORGERY BY AGENT - - - xii. 142

See PRINCIPAL AND AGENT. 2.

FORMAL OBJECTIONS TO RIGHT TO SUE [xi. 26

See PRACTICE. 22.

FOUNDER'S HEIRS - - - xvi. 137

See RELIGIOUS ENDOWMENTS. 8.

FRAUD—*Fraudulent Conveyance—Void against Creditors—*13 *Eliz. c* 5.] Whether or not 13 Eliz. c. 5 (which may not extend to or operate in the Mofussil in *India*) is more than declaratory of the common law so far as it avoids transactions intended to defraud creditors, there seems to be no doubt that its principles and the principles of the common law for avoiding fraudulent conveyances have been given effect to by the High Courts of *India*, and have properly guided their decisions in administering law according to equity and good conscience:—*Held*, on the evidence, that the heba in the cause was a covinous instrument, not made *bonâ fide* or on any good consideration, and was one by which creditors had been delayed in their just rights (the intention of the settlor being to protect his property from those who were his creditors at the time); and that the same according to equity and good conscience was fraudulent and void as against creditors. ABDOOL HYE *v.* MIR MOHAMED MOZUFFER HOSSEIN xi. 10

2. —— *Collusion — Concealment of Deeds—Principal and Agent.*] Where deeds of hypothecation and sale are ordered to be set aside on the ground of collusion between the grantor's manager and the lender, *held*, that the condition of cancelling the deeds should be, not the repayment of moneys proved to have been received by the manager, but of sums shewn to have been actually paid to the grantor personally, or borrowed by the manager in the course of a prudent management of the estate. RAJA AJIT SINGH *v.* RAJA BIJAI BAHADUR SINGH - - xi. 211

3. —— *Fraud must be Proved as Laid—Charge of Fraud amended after Evidence Taken.*] It is a well-known rule that a charge of fraud must be substantially proved as laid, and that when one kind of fraud has been charged another kind of fraud cannot on failure of proof be substituted for it.—*Montesquieu* v. *Sandys* (18 Ves. 302) approved.—Where the plaint charged a fraudulent concealment of a particular payment from the official assignee, it was unjust and unprecedented for the Court to allow the plaint to be amended after all the evidence had been taken, so as to charge that the payment itself, though known to the official assignee, was a fraud on the Court which he had no power to assent to.—The High Court having granted the relief prayed on a finding that a totally different fraud, not alleged in either the original or amended plaint, has been effected, viz., a fraudulent conspiracy between the parties to the payment and receipt of the money:—*Held*, that such judgment must be reversed. ABDOOL HOOSEIN ZENAIL ABADIN *v.* TURNER - - xiv. 111

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See HINDU LAW. 4.

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See PRACTICE. 27.

FRAUD—*continued.*

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FRAUD BY DEFENDANT AND INSOLVENT [**xx. 1**
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GARO HILLS ACT, 1869 (XXII. of 1869) **v. 178**
See LEGISLATURE.

GENERAL AVERAGE—*Maritime Law—Jettison—Contribution in respect of Jettisoned Cargo—Shipowners—Lien on Goods Salved—Master of Ship.*] The right of contribution in respect of jettisoned cargo is based on the danger to ship and cargo requiring sacrifice to which all must contribute. Such right does not belong to the wrongdoers whose acts have led to the jettison, or to those who are legally responsible for them.—Where a ship is stranded through the negligence of her master, and thereby ship and cargo are placed in a position of such imminent danger as to make it prudent and necessary to jettison part of the cargo in order to save the remainder and the ship:—*Held*, that innocent owners of the jettisoned cargo are entitled to general average; *secus* with regard to the owners of ship unless their relations to the shippers have been varied by contract.

The rules of maritime law relating to the rights and remedies resulting from a proper case of jettison are:—(1.) Each owner of jettisoned goods becomes a creditor of ship and cargo saved.—(2.) He has a direct claim against each of the owners of ship and cargo for a *pro ratâ* contribution towards his indemnity; which he can recover (*a*) by direct action; (*b*) by enforcing through the ship master, who is his agent for that purpose, a lien on each parcel of goods salved to answer its proportionate liability. STRANG, STEEL & Co. *v.* SCOTT & Co. - **xvi. 240**

GHATWALI LANDS NOT ASSETS BY DESCENT
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GHATWALIS CREATED AFTER PERMANENT SETTLEMENT - - Supp. 181
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GHATWALI TENURES—*Landed Tenures—Ghatwalis Created after Permanent Settlement—Cancelment—Resumption—Refund of Mesne Profits to Zemindar and Ghatwal—Reg. XLIV. of* 1793.] *Held*, that certain ghatwali tenures which had been created before the permanent settlement at a fixed rent could not be determined by a zemindar dispensing with the ghatwali services (which as between him and the Government were no longer required), so long as the ghatwals were willing and able to perform those services.—

GHATWALI TENURES—*continued.*

Held, that certain other ghatwali tenures which had been created after the permanent settlement could not, under Reg. XLIV. of 1793, be cancelled by a purchaser at a sale for arrears of Government revenue.—The Government having wrongfully resumed certain ghatwali lands were directed to refund mesne profits thereof, which consisted of the rent paid by the ghatwals under a settlement in force with them until the resumption was set aside:—*Held*, that, inasmuch as the ghatwals held the lands upon a tenure by which they were liable to certain rent and services, such refund should be made by paying to the zemindar the rent which was due to him by the ghatwals under the tenures, and returning to the ghatwals the remainder of the money. RAJAH LEELANUND SINGH BAHADOOR *v.* THAKOOR MUNOORUNJUN SINGH - - - **Supp. 181**

2. —— *Reg. XXIX. of* 1814—*Ghatwali Lands not Assets by Descent—Resumption—Succession*] The lands in suit being lands the tenure of which is analogous to a ghatwali tenure of the nature described in preamble to Reg. XXIX. of 1814, had been held by the Plaintiff's father during his lifetime, and had at his death descended to the Plaintiff as his son and heir, the Plaintiff having been moreover appointed thereto by the Government:—*Held*, that they were not liable to be seized in execution of a decree against the father as assets by descent in the hands of the Plaintiff, his son.—Such tenures are not resumable by the zemindar or by the Government. They are not transferable, nor saleable in execution of a decree, nor divisible. Though hereditary they are not governed by the ordinary rules of inheritance, under the Hindu or Mahomedan law, and are subject to the condition of the Government's approval of the heir.—*Rajah Lelanund Sing v. Government of Bengal* (6 Moore's Ind. Ap. Ca. 101) approved. RAJAH NILMONI SINGH *v.* BAKRANATH SINGH - - **ix. 104**

3. —— *Subordinate Tenures in Ghatwali Estate—Res Judicata—Act X. of* 1877, *s.* 13—*Adverse Possession—Act XV. of* 1877, *art.* 144.] In a suit by a ghatwal to eject the Defendants from a subordinate tenure within the ambit of the ghatwali estate on the ground that the tenure was at will only, it appeared that the father of the Plaintiff had obtained a decree against the Defendants, awarding to him the whole of the compensation money paid in respect of land formerly included within the tenure in suit, on the ground that the Defendants were merely tenants at will:—*Held*, that this was *res judicata* in the Plaintiff's favour under Act X. of 1877, sect. 13:—*Held*, further, that possession of such a tenure is not adverse to the ghatwal within the meaning of Act XV. of 1877, art. 144, until some definition or assertion of adverse right has been made between the parties, which in this case was within the statutable period. TEKAIT RAM CHUNDER SINGH *v.* SRIMATI MADHO KUMARI [**xii. 188**

4. —— *Alienation—Ghatwal's Right and Interest.*] *Held*, that a ghatwali tenure in *Kharagpore* is not malienable, and may be transferred by the ghatwal or sold in execution of a decree against him if such transfer or sale is assented

GHATWALI TENURES—*continued.*
to by the zemindar. An absolute power of alienation forms an integral portion of the ghatwal's right and interest in the ghatwali. TERAIT KALI PERSHAD SINGH *v.* ANUND ROY [xv. 18

GHATWAL'S RIGHT AND INTEREST xv. 18
See GHATWALI TENURES. 4.

GIFT—*Condition Subsequent to Gift—Void Condition.*] Case in which it was *held* that *H.* having by a valid verbal gift (followed by delivery of possession) divested himself of all his interest in certain property in favour of his wife and her children, could not afterwards annex a condition thereto, and even if he could, the condition, if immoral, would be void, and could not invalidate the gift. RAM SARUP *v.* MUSSUMAT BELA xi. 44

—— - - - - - - xvi. 205
See MAHOMEDAN LAW. 4.

GIFT AND ACCEPTANCE OF CHILD Supp. 149; [vii. 250; xix. 101
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GIFT IN REMAINDER - - - xi. 1
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GIFT OF UNDIVIDED SHARE - - vii. 18
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GIFT TO MINORS - - - - ii. 87
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GIFT TO UNBORN PERSONS - - xv. 149
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GIFT TO WIDOW, WITH REMAINDER TO DAUGHTERS - - - ii. 7
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GIFT WHEN DONOR OUT OF POSSESSION
See MAHOMEDAN LAW. 2. [xv. 81

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GRANT OF CERTIFICATE UNDER ACT XXVII. OF 1860 - - - - xii. 23
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GRANTEE'S ACTS AND DECLARATIONS OF TRUST, EFFECT OF - - vi. 161
See OUDH LAW. 12.

GRANTS BY TREATY - - - xx. 50
See INAMDARS. 2.

GUARDIAN—*Act XL. of* 1858, *s.* 3—*Manager of Estate—Infants.*] The manager of an estate is not the guardian of infant co-proprietors of that estate for the purpose of binding them by a bond, or of defending suits against them in respect of money advanced with reference to the estate, unless he has obtained a certificate of administration under Act XL. of 1858, s. 3. DOORGA PERSAD *v.* KESHO PERSAD SINGH - ix. 27

2. —— *Court of Wards—Disability of Ward.*] Where an estate has been properly taken possession of by the Court of Wards under a proper power on behalf of its ward, the latter is incompetent to bind the same by debts or alienation thereof.—*Mohummud Zahoor Ali Khan* v. *Mussumat Thakooranee Koer* (11 Moore's Ind. Ap. Ca. 468) distinguished.—Where the said Court has given to its wards, whether prudently or not, a limited authority to raise loans for the purpose of paying antecedent debts, *held*, that that is not such a holding out to the world of the competency of such wards as would induce any reasonable person to suppose that they had power to contract debts. RAI BALKRISHNA *v.* MUSSUMAT MADUMA BIBI - - - - ix. 182

3. —— *Act XL. of* 1858, *s.* 18—*Mortgage by Guardian—Rate of Interest.*] Where an order of Court under sect. 18, Act XL. of 1858, empowering a guardian to mortgage certain immoveable property of a minor, omitted to specify the rate of interest at which she was at liberty so to do, *held*, that the proper or most favourable construction of the order was, that it authorized a loan at a reasonable rate of interest, and consequently that the High Court was right, there being no proof of necessity or expediency, in decreeing interest at 12 per cent. instead of 18 per cent., as stipulated in the mortgage bond which the guardian had executed. GUNGAPERSHAD SAHU *v.* MAHARANI BIBI - - xii. 47

4. —— *Guardian's Covenant to Indemnify—Ahmedabad Talukdar Act (VI. of* 1862), *s.* 12.] Where a guardian covenanted for herself and her infant ward to indemnify the purchaser of the ward's estate against any claim by the Government for revenue:—*Held*, that it was beyond the power of the guardian to impose a

GUARDIAN—*continued.*
personal liability on the ward.—*Held*, further, that so far as the guardian purported to charge other estates of the ward to answer the covenant, the charge, whether or not it was *ultrà vires*, was void within the terms of sect. 12 of the *Ahmedabad Talukdar Act* (VI. of 1862). WAGHELA RAJSANJI *v.* SHEKH MASLUDIN - - xiv. 89

5. —— *Presumption as to Guardian's Acts.*] Where a Hindu widow executed kabuliyats as "mother of *S. L. M.*, minor":—*Held*, that she must be considered, in the absence of sufficient evidence to the contrary, as contracting as the mother and guardian of her infant son. It cannot be presumed that she was claiming the estate adversely to her son who was legally entitled; the presumption would rather be that she acted in her lawful capacity. WATSON & Co. *v.* SHAM LAL MITTER - - - xiv. 178

6. —— *Act XL of* 1858, *s* 3—*Order for Certificate.*] *Held*, that, according to the true construction of sect. 3 of Act XL. of 1858, a person who has obtained an order for a certificate thereunder is a properly constituted guardian, notwithstanding that no formal certificate in pursuance of such order has been obtained. MUNGNIRAM MARWARI *v.* MOHUNT GURSAHAI NUND [xvi. 195

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HALF-BROTHERS - - - iv. 147
See HINDU LAW. 81.

HAWALAH TENURE—*Landed Tenure—Hawalah—Resumption.*] Case in which it was held upon the evidence and authorities, no positive rule of law existing in *Rajpootana* on the subject, that the estate in suit, which was held in hawalah tenure, was not resumable by the patwir thakur merely because the holder died without issue and without adopting an heir. RAO BAHADUR SINGH *v.* MUSSUMAT JAWAHIR KUAR - xi. 75

HEARING OF APPEALS - - - xi. 26
See PRACTICE. 22.

HIGH COURT—*Contempt of Court.*] *Held*, that the High Court has power to punish summarily by imprisonment contempt of Court committed by the publication of a libel out of Court when the Court is not sitting.—Such a case is not a proper one for an appeal to Her Majesty. SURENDRANATH BANERJEA *v.* CHIEF JUSTICE AND JUDGES OF HIGH COURT OF BENGAL - x. 171

2. —— *Appellate Jurisdiction—Act VIII. of* 1859, *s.* 12—*Unconscionable Bargain as to Interest.*] A foreclosure suit relating to lands in the 24-Pergunnahs having been dismissed by the Court of the 24-Pergunnahs, and an action upon a covenant in a mortgage deed relating to lands

HIGH COURT—*continued.*
in *Nuddea* having been dismissed by the Court of *Nuddea*, the High Court reversed the dismissal in the former case, affirmed it in the latter, and then turned both suits into a contribution suit and remanded it, with directions as to the mode in which contribution should be effected, to the Court of the 24-Pergunnahs:—*Held*, that this was *ultrà vires*. Neither under sect. 12 of Act VIII. of 1859 or otherwise could the High Court in its appellate jurisdiction give jurisdiction to the Court of the 24-Pergunnahs to deal with a suit commenced and prosecuted in *Nuddea* relating to lands in *Nuddea*. Neither does the Procedure Code empower the High Court without consent of parties to change two suits, one of which it has itself dismissed, into one suit of a totally different description from either of them:—*Held*, that the charge of exorbitant interest by a mooktar to a purda-nashin, the security being ample, amounts to a hard and unconscionable bargain against which equity will relieve.—*Beynon* v. *Cook* (Law Rep. 10 Ch. Ap. 391) approved. SRIMATI KAMINI SOONDARI CHOWDHRANI *v.* KALI PROSUNNO GHOSE xii. 215

3. —— *Transfer of Suits—Act VIII. of* 1859, *ss.* 11, 12, 13—*Plaint.*] On the 20th of February, 1873, a petition was presented in the *Meerut* Court setting out all the particulars required in a plaint, and praying *bonâ fide* that the Plaintiff might be allowed to sue *in formâ pauperis*, and was rejected. It was subsequently filed in the *Delhi* Court, which, on the 14th of April, 1873, ordered that the Plaintiff's suit be admitted *in formâ pauperis*, but the High Court of the *Punjaub* directed "that the plaint should be returned to the Plaintiff, with instructions that he should present it to some Court in the *North-West Provinces*;" and eventually, on the 19th of July, 1873, the *Meerut* Court ordered "that the case be brought on the file and numbered." Questions having been raised whether the finding of pauperism in the *Delhi* Court availed in the *Meerut* Court, the Plaintiff on the 27th of November, 1874, paid the proper stamps into Court.—*Held*, that the petition of plaint filed and numbered on the 19th of July, 1873, although so much thereof as asked to be allowed to sue *in formâ pauperis* was given up when the stamp fees were paid into Court, must be considered as a plaint from the date on which it was filed, and not, as the High Court held, from the date on which the stamps were paid.—*Quære*, whether the High Courts of the *North-West* and the *Punjaub* had power under Act VIII. of 1859, ss. 11, 12, 13, to transfer the suit from the *Delhi* Court to the *Meerut* Court in the same position in which the suit stood before it was transferred, so as to import into the suit when filed in the latter Court the finding to which the former had come upon the issue of pauperism. STUART SKINNER ALIAS NAWAB MIRZA *v.* ORDE [vi. 126

4. —— *Waiver of Plea to Jurisdiction—Consent to Jurisdiction.*] The question of the jurisdiction of the High Court not having been raised before that Court:—*Held*, that the right to raise it had not been waived. There was inherent incompetency in the High Court to entertain the appeal; and consent could not confer on the

HIGH COURT—*continued.*
High Court a jurisdiction which it never possessed. *Ledgard* v. *Bull* (xiii. 134) followed. MEENAKSHI NAIDOO *v.* SUBRAMANJA SASTRI - xiv. 160

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I. HINDU LAW—ADOPTION.

1. —— *Ceremonies in Adoption—Sudras.*] Amongst Sudras in *Bengal* no ceremonies are necessary in addition to the giving and taking a child in adoption. IDROMONI CHOWDHRANI *v.* BAHARI LAL MULLICK - - - vii. 24

2. —— *Ceremonies in Adoption—Sudras—Deeds of Gift and Acceptance of Child.*] Although amongst Sudras no ceremonies are necessary in addition to the giving and taking of a child in adoption; yet it must not be inferred therefrom that there can be such a giving and taking as is necessary to satisfy the law, even amongst Sudras, by mere deed, without an actual delivery of the child by the father.

But *held*, in this case, that on the evidence certain deeds of gift and acceptance of a child, duly executed and immediately registered, had not been intended by the parties as a complete adoption; the terms of the deeds themselves not being necessarily inconsistent with such finding. MAHASHOYA SHOSIMATH GHOSE *v.* SRIMATI KRISHNA SOONDARI DASI - - vii. 250

3. —— *Adopted Son—Agreement at Adoption in Derogation of Adopted Son's Rights—Ratification.*] A Hindu widow, living her husband's minor adopted son, alienated two-thirds of her husband's estate. On the son's death, she being heiress to the son, but under authority from her husband, adopted the Plaintiff, while an infant, whose natural father gave him in adoption under an agreement that he would inherit only about one-third of his late adoptive father's estate, being aware or not caring to inquire how the two-thirds thereof had been disposed of.

The Plaintiff, two years after coming of age, and his adoptive mother executed an agreement, dated the 19th of August, 1871, and reciting the said alienations, whereby mother and son entered into a family arrangement with respect to the residue.

In a suit by the Plaintiff against his adoptive mother and the alienees of the two-thirds of the estate, to set aside the said alienation and to recover all the estate which was of the adoptive father, alleging himself to have been ousted from the whole thereof, it appeared that the agreement of 1871 was voluntarily executed by him whilst he was aware of his rights and under the advice of third parties, strangers to his adoptive mother:—

Held, that the agreement of the natural father above mentioned was not void, but was at least capable of ratification when his son came of age; and that the same was validly ratified by the said agreement of the 19th of August, 1871.

Quære, can a natural father by agreement before adoption renounce all or part of his son's right, so as to bind that son when he comes of age? RAMASAWMI AIYAN *v.* VENCATARAMAIYAN [vi. 186

4. —— *Collateral Inheritance—Adopted Son born after Death of Collateral—Fraud.*] According to Hindu law an adoption after the death of a collateral does not entitle an adopted son to come in as heir to the collateral.—An adoption having through the fraud of the Defendant been delayed till after the death of the collateral, the Defendant succeeded to the exclusion of the adopted son:—

Held, that as the latter was unborn at the death of the collateral he had no remedy, since he could not under any circumstances have succeeded. BHUBANESWARI DEBI *v.* NILKOMUL LAHIRI - - - - - xii. 137

5. —— *Succession by Daughter—Adoption of Distant Relation—Dwyámushyána.*] According to Hindu law as it obtains in *Benares*, failing a maiden daughter, the succession to a deceased father's estate devolves on an indigent married daughter, and her right of succession is not lost by reason of her becoming a childless widow.—The adoption of a very distant relation, not included within the sapindas of the adoptive father, made in violation of the preferential right of the son of a brother of the whole blood, was held to be valid. The texts which prescribe the preferential adoption of such son have not the force of laws.

Quære, whether an only son of a brother can be adopted as dwyámushyána. SRIMATI UMA DEYI *v.* GOKOOLANUND DAS MAHAPATRA v. 40

6. —— *Agreement in Restraint of Adoption—Validity of Adoption.*] Where two Hindu Mitakshara brothers entered into an agreement that "in case of failure of 'aurasa' (self-begotten) male issue" of one, their joint immoveable property should go to the other, and should not be alienated by making adoption and the like; and it appeared that one of them had a son living at the date of the agreement:—

Held, that, whether or not this agreement bound the brothers, it could not bind the son or prevent that son's adoption from conferring title by inheritance. SRI RAJA RAO VENKATA MAHA-

I. HINDU LAW—ADOPTION—*continued.*

PATI SURYA RAO BAHADUR *v.* SRI RAJA RAO VENKATA MAHAPATI GANGADHARA RAMA RAO BAHADUR - - - - - xiii. 97

7. —— *Family Customs—Onus Probandi—Custom of Adoption—Custom barring Inheritance by Adoption—Persona Designata.*] *Held*, with regard to the origin and history of a family, whose estate was in dispute, that although they affected to be Hindus, they were not governed by Hindu law, but had retained and were governed by family customs which, as regards some matters, were at variance with that law.

Held, further, upon the evidence, that the Hindu custom of succession by adoption had not been introduced into it. The *onus probandi* lay on those who alleged the custom, whereas, if the family had been subject to Hindu law the *onus* would have lain on those who alleged its exclusion.

The ruling in *Rajah Bishnath Sing* v. *Ram Churn Majmoadar* (Beng. S. D. A. (1850), p. 20), that even in a Hindu family there may be a custom which bars inheritance by adoption, approved.

Held, that on the true construction of an angikar-patra, whereby the deceased purported to give his property to the Respondent "by virtue of his being his adopted son," inasmuch as the adoption was invalid the gift did not take effect. —*Nidhoomoni Debia* v. *Saroda Pershad Mookerjee* (Law Rep. 3 Ind. Ap. 253) distinguished. FANINDRA DEB RAIKAT *v.* RAJESWAR DASS xii. 72

8. —— *Ceremonies of Adoption—Widow's Authority to Perform Ceremonies of Adoption.*] *Quære*, whether the performance of the ceremonies was essential to the completeness of an adoption; and if so, whether one widow was effectually empowered to perform them. NIDHOOMONI DEBYA *v.* SARODA PERSHAD MOOKERJEE - iii. 253

EFFECT OF ADOPTION.

9. —— *Adopted Son—Succession by Adopted Son.*] An adopted son occupies the same position in the family of the adopter as a natural born son, except in a few instances, which are accurately defined both in the Dattaka Chandrika and Dattaka Mimansa; and takes by inheritance (according to the *Bengal* school) from his adoptive mother's relations, *e.g.*, her brother. KALI KOMUL MOZOOMDAR *v.* UMA SHUNKUR MOITRA [x. 138

10. —— *Adopted Son—Collateral Succession of Adopted Son.*] An adopted son succeeds not only lineally but collaterally to the inheritance of his relations by adoption. *Sumbho Chunder Chowdhry* v. *Naraini Dibeh* (3 Knapp, 55) approved. *Held*, also, that the adopted son of the maternal grandfather of the deceased inherits, though of a different gotra, and is a nearer heir than such maternal grandfather's grandnephew. PUDMA COOMARI DEBI *v.* COURT OF WARDS [viii. 229

11. —— *Collateral Succession of Adopted Son —Adoption after Death of Collateral.*] *Held*, that an adoption after the death of a collateral does not entitle an adopted son to come in as heir to the collateral. BHUBANESWARI DEBI *v.* NILKOMUL LAHIRI - - - - xii. 137

I. HINDU LAW—ADOPTION—*continued.*

12. —— *Adopted Son—Agreement between Adoptive Mother and Natural Father—Conditional Adoption.*] An adoption otherwise valid is not prejudiced by an agreement between the adoptive mother and natural father that the former should retain her husband's estate during her life. Such an agreement does not affect the rights of the son or render his adoption conditional. BHAIYA RADIDAT SINGH *v.* MAHARANI INDAR KUNWAR - - - xvi. 53

13. —— *Validity of Adoption—Limitation—Suit by Reversionary Heirs to set aside Adoption—Act IX. of* 1871, *art.* 129.] A suit "to set aside an adoption" denotes any suit which brings the validity of an adoption under question, and therefore includes a suit for possession dependent on that issue as well as a suit to declare its invalidity:—*Held*, therefore, that art. 129 of Act IX. of 1871 relates to all suits in which the Plaintiff cannot succeed without displacing an apparent adoption by virtue of which the Defendant is in possession.—Where the Defendants had been in fact adopted by Hindu widows purporting to act in pursuance of their husbands' authority, and such adoptions had been followed by continuous possession, and had been recognized in formal instruments, proceedings and decrees to which the Plaintiffs were parties:—*Held*, that suits by reversionary heirs of the husband brought more than twelve years after the adoption, but less than that period after their title had accrued at the death of the surviving widow, were barred by art. 129 of Act IX. of 1871. *Raj Bahadoor Singh* v. *Achunbit Lal* (Law Rep. 6 Ind. Ap. 110) explained. JAGADAMBA CHOWDHRANI *v.* DAKHINA MOHUN - - - - - xiii. 84

AUTHORITY TO ADOPT.

14. —— *Authority to Adopt—Disqualified Proprietor—Reg. X. of* 1793, *s.* 33—*Minor can authorize Adoption—Suit by Hindu Widow as Reversionary Heir.*] A Hindu widow is entitled to sue to set aside an adoption by her daughter-in-law, in respect of the reversionary interest in her deceased son's estate, contingent on her surviving her daughter-in-law; but *quære* as to the effect of any decree obtained by her, having regard to her remote and contingent interest, in binding other reversioners.

Although under Reg. X. of 1793 a disqualified proprietor is prohibited from giving authority to adopt and from actual adoption, except with the sanction of the Court of Wards; yet by sect. 33 the operation of the regulation is confined to persons who are under the guardianship of the Court of Wards.

Semble, a valid authority to adopt can be granted by a Hindu minor who is not under the Court of Wards, and has attained to years of discretion according to the Hindu law. JUMOONA DASSYA CHOWDHRANI *v.* BAMASOONDERAI DASOYA CHOWDRANI - - - - - iii. 72

15. —— *Adoption by Hindu Mother after Son's Death—Consent of Sapindas—Validity of Adoption.*] In a suit by an adopted son to recover the zemindary in suit (situate in the *Dravida* district), it appeared that the original zemindar having left a son the zemindary vested in him,

I. HINDU LAW—ADOPTION—*continued.*

that on his death a minor and unmarried it vested in the widow as heiress to her son, that she some years later adopted the Appellant without a written authority from her husband, but with the consent of his surviving sapindas, all requisite ceremonies being complied with :—

Held, that the adoption being in derogation of the adoptive mother's estate, although she had taken the same in succession to her son and not to her husband, was valid.—*Bhoobunmoyee Dabee* v. *Ram Kishore Acharj Chowdhry* (10 Moore's Ind App Ca. 279) distinguished.

Secondly, the High Court was wrong, upon the evidence, in holding that there had not been such an assent upon the part of the kinsmen as to shew that the act of adoption was done by the widow in the proper and *bonâ fide* performance of a religious duty.—The *Ramnad Case* (*Collector of Madura* v. *Moottoo Ramalinga Sathupathy* (12 Moore's Ind App. Ca. 397) explained.

It would be dangerous to introduce into the consideration of adoption cases nice questions as to the particular motives, so long as they are neither corrupt nor capricious, operating on the mind of the adoptive widow. RAJAH VELLANKI VENKATA KRISHNA ROW *v.* VENKATA RAMA LAKSHMI NARSAYYA - - - - iv. 1

16. —— *Deed of Authority to Adopt—Collateral Succession of Adopted Son—Succession by Adopted Son of Deceased's Maternal Grandfather.*] Where a deed of permission to a Hindu widow to adopt provided "that (dattaka) adopted son shall be entitled to perform your and my sradh, &c., and that of our ancestors, and also to succeed to the property," and thereafter the estate of the grantor of such deed vested in the widow of his natural-born son :—

Held, that upon the vesting of the estate in such last-named widow, the power of adoption was at an end and was incapable of execution.

An adopted son succeeds not only lineally, but collaterally to the inheritance of his relations by adoption.—*Sumbho Chunder Chowdhry* v. *Narain Dibeh* (3 Knapp, 55) approved.

Held, also, that the adopted son of the maternal grandfather of the deceased inherits though of a different gotra, and is a nearer heir than such maternal grandfather's grandnephew. PUDMA COOMARI DEBI *v.* COURT OF WARDS [viii. 229

17. —— *Authority to Adopt—Construction—Simultaneous Adoptions.*] A Hindu gave to his two widows the following power: "You *S.*, the elder widow, may adopt three sons successively; and you *B.*, the younger widow, may adopt three sons successively" :—*Held*, that this did not, on its true construction, purport to authorize a simultaneous adoption :—*Held*, also, that Hindu law does not allow simultaneous adoptions. AKHOY CHUNDER BAGCHI *v.* KALAPAHAR HAJI [xii. 198

18. —— *Adoption by Widow after Estate Divested—Invalid Adoption.*] *Held*, that an adoption with the permission of sapindas by a Hindu widow to her husband, after her husband's estate has vested in his son's widow, is invalid.—*Pudma Coomari Debi* v. *Court of Wards* (Law Rep. 8 Ind. Ap. 229) and *Bhoobun Moyee Debia* v. *Ram Kishore Acharj Chowdhry* (10 Moore's Ind. Ap. 279) followed THAYAMMAL *v.* VENKATARAMA AIYAN - - - xiv. 67

19. —— *Adoption of only Son.*] Case in which it was held on the evidence that an alleged authority to adopt had not been proved.—*Quære*, whether an adoption of an only son is valid. SRI AMMI DEVI GARU *v.* SRI VIKRAMA DEVU GARU [xv. 176

20. —— *Invalid Adoption—Consent of Sapindas improperly obtained.*] Where a Hindu adopted a boy without authority from her husband, and the consent of the sapindas had been obtained to an adoption purporting to be made in pursuance of an alleged authority, and had been influenced by undue considerations :—*Held*, that such adoption was invalid. KARUNABDHI GANESA RATNAMAIYAR *v.* GOPALA RATNAMAIYAR AND RANGAIYAR - - - - vii. 173

21. —— *Adoption by Widow after Estate Divested—Invalid Adoption.*] *Held*, that the testator's widow took no power to adopt under the will in the event which happened, viz., of his estate having vested in his son and afterwards in the son's widow. *Thayammal* v. *Venkatarama Aiyan* (Law Rep. 14 Ind. Ap. 67) followed. TARACHURN CHATTERJI *v.* SURESH CHUNDER MOOKERJI - - - - - xvi. 166

22. —— *Authority to Adopt—Consent of one Distant Sapinda—Consent of Sapindas within Joint Family.*] *Held*, that an authority to adopt was genuine and sufficient to validate an adoption. Otherwise the assent given by one separated and distant sapinda (himself the father of the child taken in adoption) did not in fact purport and was not in law sufficient to authorize the adoption. Although according to the law of *Madras* a widow not having her husband's permission may adopt a son to him if duly authorized by his kindred; yet the requisite authority is in the case of an undivided family to be sought within the family, even though the particular property devolving upon the adopted son is to be held in severalty and not in co-parcenery. The *Ramnad Case* (12 Moore's Ind. Ap. Ca. 269) approved. RAGHUNADHA *v.* SRI BROZO KISHORO [iii. 154

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See HINDU LAW. 116.

INVALID ADOPTIONS.

23. —— *Invalidity of Adoption—Gift and Acceptance of Child—Construction of Will—Persona Designata.*] There being concurrent findings by the Courts below that although the ceremonies of adoption had been performed there had not been an actual gift and acceptance of the child: —*Held*, that the adoption was invalid.

Where a testator clearly indicated his intention before making an adoption, to give the greater portion of his property to the child to be adopted, the bequest being by name and not dependent upon the adoption, but appearing from the terms of the will to have been made for reasons independent of the adoption though likely to lead to it:—*Held*, that although the

I. HINDU LAW—ADOPTION—*continued.*

adoption was invalid, the bequest was effectual. BIRESWAR MOOKERJI *v.* ARDHA CHUNDER ROY CHOWDHRY - - - - xix. 101

24. —— *Simultaneous Adoption — Religious Endowment—Shebaits——Construction of Will—Persons Designata—Agreement between Adopting Widows—Adopted Son's Rights modified by Agreement at Time of Adoption.*] It is settled law that a Hindu simultaneous adoption is invalid.

Where a Hindu Rajah bequeathed all his property to a Thakoor, to secure the proper performance of the sheba and other ceremonies, directing his two widows each to adopt a son, both of which sons he appointed shebaits, subject to the control of the widows during minority, with monthly allowances from the surplus income, the residue being undisposed of; and the widows purported to adopt under such direction, at the same time binding themselves each to the other under an ikrar which recognized the rights of the boys to nurture and the enjoyment of the estate, partitioned the said estate both as between the widows and the boys until the younger attained majority, and provided that the surplus income of each moiety should be accumulated and handed over by each widow to her own son on coming of age:—

Held, in a suit by the son of the elder widow, after his mother's death, against the younger widow and her son, that under the will the widows, as heirs, become shebaits, and entitled for the widows' estate to such interests in the testator's property as were undisposed of by the will.

Second, that the boys could not take under the will either as adopted sons or as shebaits.

Third, that although the boys were neither adopted sons of the Rajah nor formal parties to the ikrar, yet they were parties to the transactions of which the ikrar formed part, and that the Plaintiff could enforce the provisions thereof against the surviving widow so far as she had bound herself to deal with the estate in his favour.

Fourth, that each son was entitled on attaining majority to a moiety of the surplus income of the estate during the life of the surviving widow, and to the accumulations thereof, accounts against the widows being directed accordingly.

The widow having died before judgment, the testator's heir was added as a party, application to be made to the Court below to add all other necessary parties. SURENDRAKESHAV ROY *v.* DOORGASUNDARI DASSEE - - xix. 108

25. —— *Second Adoption Invalid—Practice in Appeal.*] It is settled law that a man cannot, either by himself or by his widow acting under authority delegated by him, while he has an adopted son living, adopt another son.—*Rungama* v. *Atchama* (4 Moore's Ind. Ap. Ca. 1) approved. —A Plaintiff who has alleged and failed to prove a title as heir to an invalidly adopted son, cannot in appeal set up a totally new case as heir to the alleged adoptive father. GOPEE LALI *v.* MUSSAMUT SREE CHUNDRAOLEE BUHOOJEE - Supp. 131

26. —— *Second Adoption Invalid—Limitation*

I. HINDU LAW—ADOPTION—*continued.*

—Suit to set aside Adoption.] According to Hindu law a valid second adoption cannot be made when a son under a previous adoption is alive.—*Rungama* v. *Atchama* (4 Moore's Ind. Ap. Ca. 1). —*Held*, that this suit, having been brought to recover possession on the ground that the Defendant's adoption was invalid, was a suit to "set aside an adoption" within the meaning of the *Limitation Act* of 1871.—*Jagadamba Chowdhrani and Others* v. *Dakhina Mohun and Others* (Law Rep. 13 Ind. Ap. 84) followed.—Consequently, twelve years having elapsed from the date of adoption before the Act was passed, the suit, which was not instituted till after April 1, 1873, when the Act came into force, was barred by art. 129, Sched. 2. MOHESH NARAIN MOONSHI *v.* TARUCK NATH MOITRA - - - xx. 30

II. HINDU LAW—ALIENATION.

27. —— *Construction of Sunnud — Sunnud —Santán sreni kramé—Donee "his children and grandchildren."*] A Hindu granted three villages as a talook at a certain rent to his sister by a sunnud which contained the following words: "You are my sister: I accordingly grant you a talook for your support . . . Being in possession of the lands and paying rent according to the tahut jumma, do you and the generations born of your womb successively (*santán sreni kramé*) enjoy the same. No other heir of yours shall have right or interest":—

Held, that the donee took an absolute estate.

The expression, "no other heir of yours shall have right or interest," makes the absolute estate before given defeasible in the event (which did not occur) of a failure of issue living at the time of her death, in which event the estate was to revert to the donor and his heirs.

In Hindu deeds words giving lands to a donee "his children and grandchildren," confer on him an absolute estate. BHOOBUN MOHINI DEBYA *v.* HURRISH CHUNDER CHOWDHRY - - v. 138

28. —— *Gift to Unborn Persons—Gift to take Effect at some Future and Indefinite Time—Covenant to Give when Invalid.*] A conditional grant of villages to persons yet unborn who may happen to be the living descendants of the grantees named, to take effect at some future and indefinite period, on the grantor or any of his successors failing to maintain such descendants, is altogether void and ineffectual according to Hindu law. A covenant running with the estate of the covenantor, and binding its possessor to give the villages to non-existing covenantees in the event specified, would be equally void. CHUNDI CHURN BARUA *v.* RANI SIDHESWARI DEBI - xv. 149

29. —— *Deed of Gift—Construction—Gift to Children, some being Unborn—Deed of Gift and Acts done under the Deed.*] A deed of gift by a Hindu (Mitakshara) of his ancestral immoveable estate (the family being joint) in favour of the children of *U.* his only son, who consented thereto, was followed by mutation of names in favour of the only one of such children then born, under the guardianship of his mother. Both grandfather and grandchild died. In a suit by a judgment creditor of *U.* against the mother and heiress of the donee to avoid the said deed and

II. HINDU LAW—ALIENATION—*continued.*

to make the land comprised therein available to answer *U.'s* debts:—

Held, that the deed having been made on good consideration and in good faith was valid, whether or not *U.'s* creditors were unpaid:—

Held, further, that the deed, expressed to be in favour of children some of whom were unborn, was not on its true construction a gift to a class, void as to all, because inoperative as to some. If the donee's possible brothers are unable to take by virtue of the gift, the donee shall take the whole by virtue of the family arrangement, evidenced by the deed and acts done under the deed; in any event the property in suit effectually passed away from the grandfather and *U.* RAI BISHEN CHAND *v.* MUSSUMAT ASMAIDA KOER [xi. 164

30. —— *Construction—Indefinite Words of Gift when Limited—Gift with a Right to Possession Valid—Donor out of Possession.*] Indefinite words of gift are calculated to convey all the interest of the grantor, but it is necessary to read the whole instrument to gather the intention.

Where the words in a deed (ikrarnama), "I put a stop to my interest" (in those talooks) "and withdraw my enjoyment thereof, and I make them over to you," are preceded by "in order that you may perform those religious ceremonies, celebrate the festivals satisfactorily, and may provide for your own support by having the property under your authority and control":—

Held, that the indefinite words of gift must be limited by the purpose of the gift, and that it was the donor's intention that the donee should take the property only for life.

By Hindu law a gift of property, whether moveable or immoveable, may operate, where no question of resumption arises, to give to the donee a right to obtain possession; and it is not invalid by reason of its not being immediately followed by possession.—Where a donor has done all she can to complete the gift, is a party Defendant to the suit to set it aside, brought by a Plaintiff claiming adversely to both parties thereto, and admits the gift to be complete:—*Held*, that such gift cannot be set aside as utterly invalid, because the donor was out of possession, and no possession was ever given to the donee. KALI DAS MULLICK *v.* KANHYA LAL PUNDIT [xi. 218

31. —— *Alienation of Property, Principles affecting—Estates of Inheritance Void if Inconsistent with Law—Gifts must be Benignantly Construed—Estates Tail void by Hindu Law—Donee must be in Existence when Gift takes Effect—Trusts valid by Hindu Law—Estates when Illegal cannot be Created through Trusts—Construction of Will—Limitations after Invalid Estates Void—Declaration of Future Rights.*] The following general principles affecting the transfer of property must prevail wherever law exists:—

(*a.*) A private individual who attempts by gift or will to make property inheritable otherwise than the law directs is assuming to legislate, and the gift must fail, and the inheritance take place as the law directs.

(*b.*) With reference to transfers by gift, a benignant construction is to be used: the real

II. HINDU LAW—ALIENATION—*continued.*

meaning shall be enforced to the extent and in the form which the law allows.

(*c.*) All estates of inheritance created by gift or will, so far as they are inconsistent with the general law of inheritance, are void as such.

Consequently, by Hindu law no person can succeed under gift or will as heir to estates described in the terms which in English law would designate estates tail.—But, *quære*, under such gift or will, whether persons described as heirs in tail are sufficiently designated to take successively by way of gift, subject to defined restrictions; or whether the first taker is to have an estate of inheritance according to law, the residue being rejected as an attempt to impose fetters inconsistent with the law.

By Hindu law, as a general principle, a person capable of taking under gift or will must either in fact or in contemplation of law be in existence at the time when the gift takes effect, *i.e.*, in the case of a will, at the death of the testator. In the latter term are included children in embryo and children subsequently adopted. There may be exceptional cases of provisions by way of contract, or of conditional gift on marriage, or other family provision.

Trusts of various kinds, including implied trusts, have been recognized and acted on amongst Hindus in many cases; and in cases of a provision for charity, or for other beneficent objects, the creation of a trust is practically necessary. The distinction between "legal" and "equitable" represents only the accident of falling under diverse jurisdictions, and not the essential characteristic of a possession in one, for the convenience and benefit of another.

But a testator cannot, under the guise of an unnecessary trust of inheritance, indirectly create beneficiary estates of a character unauthorized by law, and which could not directly be given without the intervention of the trust. Trusts so created can only be sustained to the extent and for the purpose of giving effect to those beneficiary interests which the law recognizes, and after the determination of those interests the beneficial interest in the residue of the property remains in the person who but for the will would lawfully be entitled thereto.

A Hindu may by gift or will create an estate for life.—Where a testator left the residue of his estate to *A.* for life, with subsequent void limitations, as, for instance, in favour of persons unborn at the death of the testator, and limitations describing an inheritance in tail male; and at the same time it appeared that no estate of inheritance other than the void estate in tail male could be read or deduced from the will:—*Held*, that the estates of inheritance and estates or interests subsequent to *A.'s* life interest failed. Limitations over on "failure or determination" of prior estates of inheritance were *held* to be intended to follow the creation of those estates, and consequently to be of no effect when it appeared that such prior estates were illegal and invalid.

Where the will directed the surplus of the personalty, after all annuities and legacies had fallen in and been satisfied, should be paid to the person or persons who for the time being should, under the limitations and directions therein con-

II. HINDU LAW—ALIENATION—*continued.*

tained, be entitled to the beneficial enjoyment of the real property:—*Held*, that the tenant for life was entitled to the interest on such personalty as well after as before the falling in and satisfaction of the legacies and annuities; and that the intention was to establish a trust fund, the interest whereof should be paid to the person or persons for the time being successively entitled to the rents of the real estate, the *corpus* remaining otherwise undisposed of.

Where all existing parties interested under a will are in Court, a declaration as to future rights after the determination of the life interest may be made.—*Lady Langdale* v. *Briggs* (8 D. M & G. 391) distinguished JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. GANENDROMOHUN TAGORE *v.* JUTTENDROMOHUN TAGORE - **Supp. 47**

III. HINDU LAW — ANCESTRAL OR JOINT ESTATE.

32. —— *Joint Estate—Purchase with Joint Funds—Practice in Execution Proceedings.*] A purchase by a member of a Hindu joint family with the joint funds is a purchase on account of the joint family, and property so bought may be taken in execution for a joint family debt.—In execution proceedings the Court will look at the substance of the transaction, and will not be disposed to set aside an execution upon mere technical grounds when they find that it is substantially right. BISSESSUR LALL SAHOO *v.* MAHARAJAH LUCHMESSUR SINGH - - **vi. 233**

33. —— *Sale of Undivided Share—Purchaser—Survivorship.*] Where a Hindu without the consent of his co-parcener had sold his undivided share in the family estate for his own benefit, and received the purchase-money to his own use:—*Held*, that on his death his surviving co-parcener was entitled to the said share under the Mitakshara law by survivorship, and to recover the same from the purchaser, and that the latter had no equity or charge thereon against such survivor in respect of his purchase-money. MADHO PERSHAD *v.* MEHRBAN SINGH - - **xvii. 194**

34. —— *Family Custom — Primogeniture — Succession to Joint and Separate Estates in same Family — Impartible Estate may be Joint.*] A custom of descent according to the law of primogeniture may exist by Kolachar or family custom, although the estate may be neither a raj nor a polliam —Whether the general status of a family be joint or divided, property which is joint will follow one, and property which is separate will follow another course of succession.—Where ancestral impartible property is governed by the law of the Mitakshara, that law, in the event of the holder dying without male issue, would if the family be undivided give the succession to the next collateral male heir in preference to the widow or daughters of the last possessor. Such property is not deemed to be separate estate while the family remains joint and undivided in the full sense of the term. *Katama Natchiar* v. *The Rajah of Shivagunga* (9 Moore's Ind. Ap. Ca. 539) approved. CHOWDHRY CHINTAMUN SINGH *v.* MUSSAMUT NOWLUKHO KONWARI **ii. 263**

35. —— *Alienation by Co-parcener of his Share—Sale in Execution of Co-parceners' Share—*

III. HINDU LAW—ANCESTRAL OR JOINT ESTATE—*continued.*

Mortgagee of Co-parceners' Share can Attach and Sell.] It is the settled law of the Mitakshara, as administered in *Bengal* and the North-West Provinces, that a Hindu cannot, without the consent of his co-parceners, sell or mortgage his undivided share in the ancestral estate for his own benefit.

Where a son had mortgaged his half-share, and his father had *bonâ fide* without notice of the mortgage purchased portions of the mortgaged property at sales in execution of decrees against the son, *held* that the son's co-parcenary interest therein passed to the purchaser, and that the only remedy of the mortgagee was to attach and sell any unsold portion of the mortgaged property in execution of a money decree against the mortgagor. BALGOBIND DAS *v.* NARAIN LAL **[xx. 116**

36. —— *Will—Unequal Distribution of Ancestral Property—Alienation by Co-parcener of his Share—Devise by Co-parcener of his Share—Gift of Undivided Share — Suit for Partition — Res Judicata — Limitation — Estoppel.*] Under the Mitakshara law as received in *Bombay*, a father cannot by will make an unequal distribution of ancestral property, whether moveable or immoveable, between his sons.

Although one of several co-parceners has under the same law the power of alienating his undivided share in ancestral estate without the consent of his co-sharers by deed executed for valuable consideration; and although such share may be seized and sold in execution for the separate debt of the co-sharer, at least in the lifetime of the judgment debtor, yet such alienation cannot be made by will.—*Quære*, whether any distinction can be drawn between a gift and a devise of such share in favour of the validity of gifts. Their Lordships are not disposed to extend such power of alienation beyond the decided cases, which rest not on an admitted principle of Hindu law, but on an exceptional doctrine established by modern jurisprudence. In *Bombay* such cases are adverse to the validity of gifts.

A demurrer having been allowed to a suit for partition by a son against his father and brother, on the ground that as regards the immoveable property the Court had no jurisdiction, and that as regards the moveable property he could not assert his rights therein, according to Mitakshara law, during his father's lifetime; such order is not an adjudication between the brothers as to their rights in the joint ancestral estate, and therefore is no bar to a fresh suit for partition after the father's death.—Such suit is not barred by limitation as regards the immoveable property, when it appears that the Plaintiff has been all along in possession of a portion thereof.

Assuming that the moveable property might be treated as distinct, and that the Plaintiff had received no payment thereout during the statutable period:—*Held*, that the Defendant having had the benefit of the order on demurrer as a valid adjudication against the Plaintiff's right of suit in his father's lifetime, was estopped from setting up the statute as a bar, and from insisting that such order could have been appealed from as

III HINDU LAW ANCESTRAL OR JOINT ESTATE- *continued.*

erroneous in law, and that therefore it did not suspend the running of the statute. LAKSHMAN DADA NAIK *v.* RAMCHANDRA DADA NAIK vii. 18

37. —— *Concurrent Judgments—Separate Acquisition with Joint Funds — Education out of Joint Funds.*] Concurrent judgments of two Courts on a question of fact allowed to be disputed because the question of fact appeared to be a good deal mixed up with law.

It was contended in a suit to set aside a will, that under Mitakshara law property acquired by a son by successful trading and the exercise of industry and intelligence, became joint in contemplation of law if the nucleus with which he commenced trading was derived from his father, or if he had been educated out of the joint funds of the family:—*Held*, on the evidence, that such nucleus had not been derived from his father, and that the son had not been educated out of any joint fund, but out of the separate estate of the father; otherwise very strong and clear authority would be required to support the above contention, which, if correct, would incapacitate a Hindu who has received any education out of joint funds from ever acquiring separate estate. PAULIEM VALLOO CHETTY *v.* PAULIEM SOORYAH CHETTY - - - - - iv. 109

38. —— *Son's Inchoate Interest by Birth—Compromise by Father.*] Although a son under Mitakshara law acquires by birth an interest in the share to which his father is entitled under a Government grant of immoveable property, he does not acquire by birth any equitable right to procure an alteration in the terms of such grant either as against the Government, his father, or his father's co-sharers, or to sue to set aside a compromise in respect thereto which his father has effected with his co-sharers. CHAUDHRI UJAGUR SINGH *v.* CHAUDHRI PITAM SINGH [viii. 190

39. —— *Execution Sale of Co-parcener's Share Limitation — Act XIV. of* 1859, *ss.* 11, 12 — *Act VIII. of* 1859, *s.* 246 — *Suspension of Limitation.*] An undivided share in joint estate under the Mitakshara law was taken possession of by the two widows of the deceased co-sharer. The surviving male members of the joint family were two nephews, one of whom, *S.*, after a decree to that effect against the widows and the Appellant (the other nephew) obtained possession of a moiety of that undivided share, whilst the other moiety was sold in execution of various decrees obtained against the widows by creditors of the deceased. In regard to three of the execution sales, the Appellant, by his mother and guardian, more than a year before suit, unsuccessfully applied, under sect. 246 of Act VIII. of 1859, for a release of the property attached; in regard to another sale, it was made of property subject to a zurpeshgee lease created by the deceased.

The Appellant (by his mother and guardian) sued the widows, the auction purchasers, the zurpeshgeedars, and *S.*, in order to set aside those sales and recover possession of his moiety; but with regard to the zurpeshgeedar Defendants no special grounds for setting the leases aside were

III. HINDU LAW—ANCESTRAL OR JOINT ESTATE—*continued.*

alleged in the plaint, nor were any issues specially pointed to the validity thereof. *S.* disclaimed all title to such moiety.—A Full Bench of the High Court, in answer to questions referred to it by the Division Bench in this suit, ruled, first, that the Appellant had a right to sue the purchasers under the decree to recover back the estate, inasmuch as the property belonged to him, and the title under the decree against the widows was an invalid title; and, secondly, that the deceased had no authority to mortgage his undivided share in the joint family property if it should appear that he did so without consent of his co-sharers, and in order to raise money on his own account, and not for the benefit of his family. No appeal was preferred against these rulings, and the Division Bench held, in alleged conformity thereto, that the title of all the Defendants, including the zurpeshgeedars, who were not entitled to have their mortgage redeemed, failed; that in regard to three sales the Appellant's claim was barred under sect. 246 of Act VIII. of 1859, inasmuch as he had sued whilst under disability, and after a year had elapsed from the rejection of his claims; but that, notwithstanding the first answer of the Full Bench, the whole suit must be dismissed on the ground that it was wrongly framed, inasmuch as the Appellant could not, consistently with the second answer, sue for his separate share:—

Held, by their Lordships, that inasmuch as *S.*, the only other member of the joint family, had disclaimed all interest in the Appellant's share, and had been made a party Defendant; and inasmuch as the title of the purchasers was founded on execution sales confined to that moiety which on partition would fall to the Appellant; and inasmuch as the objection to the frame of the suit, which was purely technical and not substantial, had not been taken by the Defendants, but originated with the Division Bench; such objection cannot be allowed to prevail against the substantial justice of the case.

Held, also, that the Appellant cannot in this suit recover against the zurpeshgeedars, no proper issue with reference to their title to be redeemed having been framed and determined.

Held, also, that sects. 11 and 12 of Act XIV. of 1859 apply to sect. 246 of Act VIII. of 1859, and that the Appellant was under disability within the meaning of those sections, and that the suit having been brought after the expiration of a year, but during disability, was in time:—*Quære*, whether the Respondents if they had appeared could have contested in this appeal the correctness of the above answers by the Full Bench, the said answers not having been in the form of a decree, or even of an interlocutory order. MUSSUMAT PHOOLBAS KOONWUR *v.* LALLA JOGESHUR SAHOY - - - - iii. 7

40. —— *Son's duty to Pay his Father's Debts —Alienation by Father of Ancestral Estate—Alienation by Father of his Undivided Share—Immoral Debts—Son Born after Ancestral Estate Alienated.*] Ancestral property which descends to a man under the Mitakshara law is not exempted from liability to pay his debts because a

III. HINDU LAW — ANCESTRAL OR JOINT ESTATE—*continued.*

son is born to him. It is a pious duty on the part of the son to pay his father's debts, and the ancestral property in which the son, as son, acquires an interest by birth is liable to the father's debts, unless they have been contracted for immoral purposes. The Mithila law is the same.

Where a father has sold ancestral property for the discharge of his debts, if the application of the bulk of the proceeds has been satisfactorily accounted for, the fact that a small part is not accounted for will not invalidate the sale. A son cannot, under the Mithila law, set aside the sale of ancestral property by his father for the discharge of the father's debt, and oust the purchaser.

Whether a son can under the Mitakshara law recover an undivided share of ancestral property sold by his father, *quære.*—A son is not entitled under the Mithila law to any interest in ancestral property sold by the father before his birth. GIRDHAREE LALL *v.* KANTOO LALL - i. 321

41. —— *Execution Sale of Father's Undivided Share—Partition—Purchaser at Execution Sale of Father's Share.*] The rights and proprietary and mokurruri title and share of a Hindu father in the joint family estate under Mitakshara law having been seized and sold in execution of a decree against him, possession of the whole estate was delivered to the Appellant as purchaser.

In a suit by the Respondent, the son of the judgment debtor, to recover the same on the ground that it could not be sold in execution without proof of legal necessity for the debt:—*Held*, assuming that a member of a Mitakshara joint family may not dispose of his share in the joint estate by voluntary conveyance without the concurrence of his co-parceners, that the Appellant, as purchaser at an execution sale of such share, was entitled to ascertain the same by such partition as the judgment debtor might have compelled before the alienation of his share took place. DEENDYAL LAL *v.* JUGDEEP NARAIN SINGH - - - - - iv. 247

42. —— *Execution Sale of Father's Share after his Death—Immoral Debts—Purchaser with Notice of Son's Rights—Execution Sale after Co-parcener's Death—Lien arising from Execution Proceedings.*] An *ex parte* decree for money having been obtained against a Hindu governed by the Mitakshara, upon a bond whereby he had mortgaged his ancestral immoveable estate, the same was attached. Prior to the execution sale the judgment debtor died, and his infant sons and co-heirs, on filing a petition of objections, had been referred to a regular suit.

In a suit after the sale by the said infants against the execution creditor and the purchasers, for the adjudication of their right to and confirmation of possession in the property sold, and to have the mortgage bond, the *ex parte* decree, and the execution sale set aside, it appeared that the father's debt was immoral, and had been incurred without justifying necessity:—

Held, that as between the infants and the execution creditor, neither they nor the ancestral

III. HINDU LAW — ANCESTRAL OR JOINT ESTATE—*continued.*

immoveable property in their hands was liable for the father's debt.

Held, as regards the purchasers, that they having purchased after objections filed by the Plaintiffs, must be taken to have had notice, actual or constructive, thereof, and therefore to have purchased with knowledge of the Plaintiffs' claim and subject to the result of the suit to which they had been referred.

Held, as regards the judgment debtor's undivided share in the estate sold, that whether or not his own alienation was valid by the law as understood in *Bengal*, it was capable of being seized in execution, and that the effect of the execution sale was to transfer the said share to the purchasers, the execution proceedings having at the time of the judgment debtor's death gone so far as to constitute in favour of the execution creditor a valid charge thereon which could not be defeated by the judgment debtor's death before the actual sale. SURAJ BUNSI KOER *v.* SHEO PERSHAD SINGH - - - vi. 88

43. —— *Execution Sale of Father's Share—Partition—Purchaser at Execution Sale of Father's Share*] The right, title, and interest under Mitakshara law of a father in a joint family estate having been attached in execution of a decree for money and sold, *held*, that the purchaser took the right which the father would have had to a partition, and the share which would have come to him on a partition being made. BABOO HURDEY NARAIN SAHA *v.* PUNDIT BABOO ROODER PERKASH MITTER - - - - xi. 26

44. —— *Execution Sale of Ancestral Estate—Father's Immoral Debts—Purchaser at Execution Sale of Ancestral Estate*] In an execution sale it appeared that the debt was a joint family debt incurred by *G.*, the head of a joint Mithila family, and that the property sold was the share of the whole family in a certain mouzah:—*Held*, that *Deendyal's Case* (Law Rep. 4 Ind. Ap. 247) did not bind the Court to hold that nothing but *G.'s* co-parcenary interest passed to the purchasers.

What passes by such a sale depends upon the nature of the debt (*e.g.*, whether or not it is tainted with immorality) and the intention of the parties.

The other co-parceners not being parties to the sale or the execution proceedings, are entitled to try the fact or the nature of the debt in a suit of their own. The purchaser, if he has bought the entirety, may defend his title on any ground which would have justified the sale. MUSSAMUT NANOMI BABUASIN *v.* MODUN MOHUN - xiii. 1

45. —— *Execution Sale of Father's Share—Purchaser.*] Where an execution sale relates to a Mitakshara joint family estate, and the father alone has been party to the proceedings, and it appears that his mortgage, the suit of the creditor, the decree and the sale certificate all purported to affect his right and interest alone:—*Held*, that, whatever the nature of the debt, only his right and interest were intended to pass. —*Upooroop Tewari* v. *Lalla Bodhjee Suhay* (Ind. L. R. 6 Calc. 749) distinguished. SIMBHUNATH PANDAY *v.* GOLAB SINGH - - xiv. 77

III. HINDU LAW—ANCESTRAL OR JOINT ESTATE—*continued.*

46. —— *Execution Sale of Father's Share—Purchaser.*] Case in which it was held that what was intended to be sold and bought at an execution sale was the right, title, and interest of the father of a joint Hindu family in the joint estate. Even if there were any ambiguity in one of the sale proclamations the purchaser by ordinary inquiry could easily have learnt the truth, and he was benamee for the execution creditors who were affected with full notice of all the proceedings. PETTACHI CHETTIAR *v.* SANGILI VEERA PANDIA CHINNATHAMBIAR - - xiv. 84

47. —— *Execution Sale of Ancestral Estate—Immoral Debts—Onus Probandi.*] Where ancestral estate governed by the Mitakshara has been sold in execution against a Hindu father upon a bond debt contracted by him, the *onus* is upon the sons when seeking to set aside such sale to prove that the debt was contracted for an immoral purpose. It is unnecessary for the creditors to show that there had been a proper inquiry, or that the money had been borrowed in a case of necessity. BHAGBUT PERSHAD *v.* MUSSUMAT GIRJA KOER - - - - xv. 99

48. —— *Execution Sale of Ancestral Estate—Immoral Debts—Son's Liability for Father's Debts.*] Where it appeared that an execution sale related to the whole zemindary, and not merely to the interest of the judgment debtor therein:—*Held*, in a suit by a son of the judgment debtor, impeaching his father's debt as tainted with immorality, that, on failing to establish that allegation, his suit must be dismissed. Under Mitakshara law the son's interest was liable for the father's debt. MEENAKSHI NAIDU *v.* IMMUDI KANAKA RAMAYA KOUNDEN - - xvi. 1

49. —— *Execution Sale of Ancestral Estate—Immoral Debts—Son's Liability for Father's Debts.*] Where in an execution sale under a decree against a Hindu father, the joint family being governed by Mitakshara law, the entirety of the joint family estate has been sold:—*Held*, that the only claim which the son has to set up against the purchaser his right as a co-sharer, results from proof that such sale has been made in order to satisfy debts of his father or other ancestor contracted for immoral purposes.—*Nanomi Babuasin* v. *Modun Mohun* (Law Rep. 13 Ind. Ap. 1) and *Bhagbut Pershad* v. *Girja Koer* (Law Rep. 15 Ind. Ap. 99) followed. RAI BABU MAHABIR PERSHAD *v.* RAI MARKUNDA NATH SAHAI - - xvii. 11

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See LIMITATION. 42.

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See SALES FOR ARREARS OF REVENUE. 2.

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See HINDU LAW. 61.

IV. HINDU LAW—ESCHEAT.

50. —— *Escheat — Grantee from Zemindar dying without Heirs—Prerogative of the Crown.*] The grantee from an Hindu zemindar of an ordinary mokurreree istimraree tenure having died without heirs, the Crown, by the general prerogative, was held entitled thereto, subject to payment of the rent observed.—The mokurreree, though carved out of a zemindary, being an absolute alienable interest therein, could not have reverted to the grantor; and there is no authority upon which the power of taking by escheat can be attributed to him; for the principles of English feudal law are clearly inapplicable to a Hindu zemindar.—*Collector of Masulipatam* v. *Cavalry Vencata Narrainapah* (8 Moore's Ind. Ap. Ca. 500) approved. RANEE SONET KOWAR *v.* MIRZA HIMMUT BAHADOOR, MUSSUMAT BIMMULLAH BEGUM (*alias* NUNHOO SAHIBA), AND MUSSUMAT SAHIBZADEE BEGUM - - - iii. 92

IV. HINDU LAW—ESCHEAT—*continued.*

V. HINDU LAW—IMPARTIBLE ESTATE.

51. —— *Impartible Estate—Succession Custom—Eldest Son—Sons by different Mothers, Priority of.*] The rule of succession to an impartible subject, as a raj or office, is generally regulated by some local or family usage, which, however, must be ancient, invariable, and clearly proved; otherwise, the rule of succession must be deduced from settled rules of Hindu law, and the principles on which they are founded.

Such rules are that, (1.) The first-born son by reason of his general pre-eminence is preferred to his younger brother; (2.) Where the sons are by different mothers of equal caste seniority is according to birth, and not in right of the mother (unless possibly in the case of the first wife) according to priority of marriage. RAMALAKSHMI AMMAL *v.* SIVANANANTHA PERUMAL SETHURAYER. [Supp. 1

52. —— *Impartible Estate — Succession — Nomination of Successor by Government—Adoption—Consent of one distant Sapinda.*] The Hindu zemindar of *Chinnakimidy*, an hereditary impartible zemindary, died without legitimate male issue, leaving a widow. The Appellant, his undivided half-brother, was placed in possession by the Collector as successor to the deceased; the Government claiming to nominate a successor in the case of zemindaries for which, though permanently settled, no permanent sunnud had been issued.—Thereafter the widow adopted the Respondent as a son of the deceased, in pursuance of his alleged written authority in that behalf, and with the consent of the natural father of the Respondent, himself a sapinda of the deceased, though separate in estate from him.

In a suit brought by the Respondent, by his adoptive mother and guardian to recover the zemindary with mesne profits:—

Held, that there was no foundation for the claim of the Government to nominate a successor, and that it was settled law that the title to the zemindary is to be determined by the ordinary law of succession.—The *Marungapury Case* (Law Rep. 1 Ind. Ap. 282) approved:—

Held, also, that the authority to adopt was genuine, and sufficient to validate the adoption.—Otherwise, the assent given by one separated and distant sapinda (himself the father of the child taken in adoption) did not in fact purport, and was not in law sufficient to authorize the adoption.

Although, according to the law of *Madras*, a widow not having her husband's permission may adopt a son to him, if duly authorized by his kindred; yet the requisite authority is, in the case of an undivided family, to be sought within the

V. HINDU LAW — IMPARTIBLE ESTATE — *continued.*

family, even though the particular property devolving upon the adopted son is to be held in severalty, and not in co-parceny.—The *Ramnad Case* (12 Moore's Ind. Ap. Ca. 269) approved.

Their Lordships in discussing the evidence respecting the genuineness of the alleged authority to adopt, observed that the proper object of a judgment is to support by the most cogent reasons that suggest themselves, the final conclusions at which the Judge has conscientiously arrived. That object is defeated by the Judge elaborately recording the fluctuations of his mind from day to day in reference to the witnesses, the evidence, and the arguments. It is a substantial objection to such judgment, that it does not dispose of the question as it was presented by the parties, *e.g.*, where it finds a particular signature to be a forgery, which both sides admit to be genuine. SRI RAGHUNADHA *v.* SRI BROZO KISHORO iii. 154

53. —— *Impartible Estate—Impartible and Joint—Impartible and Separate—Succession.*] An ancient and impartible zemindary, originally portion of the *Shivagunga* estate, having descended, under Mitakshara law, as joint ancestral estate to the eldest of three Hindu joint brothers, was in 1829 by a deed of family arrangement transferred by him to the two younger brothers (one of whom died subsequently without issue), to be held by them with all its incidents of impartibility and peculiar course of descent:—

Held, that as between the descendants of the grantor and the son of the surviving grantee, the zemindary was the separate property of the latter; and that on his death his right passed to his widow, notwithstanding the undivided *status* of the family, according to the rule of succession affirmed in the *Shivagunga Case* (9 Moore's Ind. Ap. Ca. 539). PERIASAMI *v.* RAMASAMI CHETTI [v. 61

54. —— *Construction of Sunnud—Resumption of Impartible Estate—Creation of New Tenure.*] Prior to 1802 the zemindary in suit formed part of an ancient and much larger estate, which was indivisible and descendible to a single heir, and which, prior to the British rule, was a military jaghire held on the tenure of military service, and in the nature of a raj or principality. The whole estate was resumed by the British Government for arrears of revenue.

In 1802 the said zemindary was granted to *R.* by a sunnud the provisions of which differed in no respect from those which are contained in every ordinary deed of permanent settlement; the feudal or military tenure was at an end. The zemindary so granted became a new zemindary, subject only to the payment of a fixed land revenue, and subject to the ordinary stipulations and the performance of the duties ordinarily imposed upon zemindars.—By clause 7 it was said, "You shall be at free liberty to transfer, without the previous consent of Government or of any other authority, to whomsoever you may think proper, either by sale, gift, or otherwise, your proprietary right in the whole or in any part of your zemindary."—By clause 15 it was said, "You are hereby authorized and empowered to hold in perpetuity to your heirs, successors, and assigns at the permanent assessment herein named the zemindary":—

Held, that, upon the true construction of the sunnud, the zemindary thereby created was not impartible or descendible otherwise than according to the ordinary rule of Hindu law.—The *Hunsapore Case* (12 Moore's Ind. Ap. Ca. 6) distinguished; in which the transaction was not so much the creation of a new tenure as the change of the tenant by the exercise of a *vis major*. RAJAH VENKATA NARASIMHA APPA ROW BAHADUR *v.* RAJAH NARAYYA APPA ROW BAHADUR. RAJAH VENKATA NARASIMHA APPA ROW *v.* THE COURT OF WARDS - - - - - vii. 38

55. —— *Impartible Estate alienable by Law—Custom against Alienation.*] The impartibility of a raj does not render it inalienable as a matter of law. Its inalienability depends upon family custom, which must be proved.—*Anund Lall Singh Deo* v. *Maharaja Gobind Narain Deo* (5 Moore's Ind. Ap. Ca. 82) approved. RAJAH UDAYA ADITYA DEB *v.* JADUB LAL ADITYA DEB [viii. 248

56. —— *Impartible Estate liable for Father's Debts—Self-acquisition—Estate Inherited from Maternal Grandfather.*] *Held*, that the interest which the Defendant took by heritage from his father in an impartible zemindary was liable as assets by descent for the payment of his father's debts.—*Girdhari Lall* v. *Kantoo Lall* (Law Rep. 1 Ind. Ap. 321) approved and declared applicable to the *Madras* Presidency:—*Held*, further, that a zemindary to which a Hindu succeeds by inheritance to his maternal grandfather is not his self-acquired property; but, *quære*, whether he is under the same restrictions as to the alienation or hypothecation thereof as he would have been if it had descended to him from his father or paternal grandfather. MUTTAYAN CHETTIAR *v.* SANGILI VIRA PANDIA CHINNATAMBIAR - - ix. 128

57. —— *Impartible Estate not Separate—Family Custom—Succession by Nearest Male Heir—Succession by Females.*] *Held*, on the evidence in the case, that the raj in question was an ancient raj and an ancestral estate, and that by virtue of an ancient custom in the family it was impartible.

According to the Mitakshara the estate being ancestral and the family undivided, the Plaintiff as the nearest male heir of the deceased rajah and the surviving member of the undivided family was entitled to succeed to the raj in preference to the widow.

A female cannot inherit an impartible ancestral estate belonging to a joint Hindu family governed by the Mitakshara when there are any male members of the family who are qualified to succeed as heirs.—*Maharani Hiranath Koer* v. *Baboo Ram Narain Singh* (9 Beng. L. R. 274) approved:—

Held, in this case, that such law was not shewn to have been modified by an ancient uniform custom in favour of the widow.—An ancestral estate even though impartible is not the separate or self-acquired estate of the single member upon whom it devolves so long as the family continues joint.—*Chintamun Singh* v. *Mussumut Nowlukha*

V. HINDU LAW—IMPARTIBLE ESTATE—*continued.*

Konwari (Law Rep. 2 Ind Ap. 263) approved. RAJAH RUP SINGH *v.* RANI BAISNI AND THE COLLECTOR OF ETAWAH - - - xi. 149

58. *Impartible Estate — Custom as to Alienation—Son not Co-sharer with Father—Son's Interest by Birth.*] Where an ancestral raj, in other respects governed by the Mitakshara law, is by custom impartible and by custom descendible to a single heir by the rule of primogeniture; in order to render the rajah's alienations invalid, as made without the consent of his son, it must be shewn that the rajah's power of alienation is excluded by the custom or by the nature of the tenure.—In such a raj the son is not a co-sharer with his father. Property in ancestral estate acquired by birth under the Mitakshara law is so connected with the right to partition that it does not exist independently of such right. RANI SARTAJ KUARI *v.* RANI DEORAJ KUARI - xv. 51

59. —— *Impartible Estate—Custom of Primogeniture—Madras Regulation XXV. of* 1802—*Construction of Sunnud.*] The question whether an estate is subject to the ordinary Hindu law of succession or descends according to the rule of primogeniture must be decided in each case according to the evidence given in it:—*Held*, in this case, on the evidence, that the estate of *Devarakota* is impartible and descends to the eldest son of the last owner.—By Regulation XXV. of 1802 (*Madras*) and the istimirar sunnud issued thereunder, the zemindar acquired a permanent property in the estate at a fixed assessment, but the tenure and right of succession remained unchanged.—The *Hunsapore Case* (12 Moore's Ind. Ap. Ca. 35) held applicable. SRIMANTU RAJA YARLAGADDA MALLIKARJUNA *v.* SRIMANTU RAJA YARLAGADDA DURGA - - - xvii. 134

60. —— *Impartible Estate—Onus Probandi.*] *Held*, with regard to a zemindari granted in 1803, that the *onus* was on the zemindar to prove that his zemindari was impartible.—Where the evidence failed to shew that the nature and terms of the grants by the Government under which the zemindari had been held during the present century contemplated impartibility, or that there had been any usage to that effect in the succession to the estate or its enjoyment:—*Held*, that whether or not impartibility had been the ancient rule applicable to the estate, it could not now be exempted from the ordinary rule of Hindu law which rendered such property partible. ZEMINDAR OF MERANGI *v.* SRI RAJAH SATRUCHARLA RAMABHADRA RAZU - - - - xviii. 45

VI. HINDU LAW—MAINTENANCE.

61. —— *Illegitimate Son—Father's Power to Assign Ancestral Estate before Birth of Sons.*] The illegitimate son of a Hindu belonging to one of the twice-born classes has a right to maintenance; and an assignment to him by his father before the birth of a legitimate son and heir of ancestral immoveable estate for that purpose is valid.—*Quære*, whether, under the Mitakshara law, a father who has no legitimate son is competent to alienate the whole or part of his ancestral estate to a stranger. RAJAH PARICHAT *v.* ZALIM SINGH - - - - iv. 159

VI. HINDU LAW—MAINTENANCE—*contd.*

62. —— *Hindu Widow—Amount of Maintenance.*] Case in which some of the elements in determining what is a suitable amount of maintenance for a Hindu widow out of her deceased husband's estate were considered.—A Court is not justified in reducing, as a kind of punishment for vexatious defence to a suit, the amount of maintenance which it would otherwise have awarded. SREEMUTTY NITTOKISSOREE DOSSEE *v.* JOGENDRO NAUTH MULLICK - - v. 55

63. —— *Hindu Mothers—Charge on Joint Estate—Charge on Separate Estate of Sons.*] Where there are several groups of sons of a deceased Hindu by different mothers, the maintenance of the mothers must so long as the estate remains joint be a charge upon the whole estate. But when a partition has been made each mother is entitled to maintenance against the share allotted to her own son or sons, and has no claim against the shares of her step-sons. SRIMATI HEMANGINI DASI *v.* KEDAR NATH KUDU CHOWDHRY xvi. 115

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See HINDU LAW. 85.

VII. HINDU LAW—MARRIAGE AND LEGITIMACY.

64. —— *Legitimacy.*] A child, born in wedlock, of a Hindu husband and wife, is not rendered illegitimate by the circumstance that he was begotten before their marriage. COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI AND OTHERS [i. 282

65. —— *Impartible Estate—Illegitimate Brother's Succession—Sudras.*] Where a deceased rajah had succeeded to an impartible raj as the only legitimate son of the last holder:—*Held*, that the deceased, not having left male issue, the Plaintiff, as an illegitimate son of the same father, the family belonging to the Sudra caste, was entitled under the Mitakshara to succeed by survivorship. RAJA JOGENDRA BHUPATI HURRI CHUNDUN MAHAPATRA *v.* NITYANUND MANSINGH [xvii. 128

VIII. HINDU LAW—PARTITION.

66. —— *Right to Partition—Lapse of Time.*] In a joint Hindu family, in which partitions of family property have formally taken place, the fact that there has been no division of the estate during six or seven generations does not deprive the members of the right to demand a partition.—Rule against giving special leave to re-open the whole case, when application is made for the first time at the hearing of the appeal. THAKUR DURRIAO SINGH *v.* THAKUR DAVI SINGH - i. 1

67. —— *Manager of Joint Estate—Adverse Possession—Limitation.*] Where the bulk of the estate of a Hindu family is held and managed by a single member of the family, and the other members receive and enjoy part of the lands as seer, the possession of the bulk of the estate by the manager is not adverse, so as to bar, under the *Limitation Act* XIV. of 1859, s. 1, cl. 13, a suit by the others for partition; unless there are circumstances to shew that they accepted the seer lands in lieu of the shares that would have been allotted to them on a partition.—The case

VIII. HINDU LAW—PARTITION—*continued.*

of *Appovier* v. *Rama Subba Aiyan* (11 Moore's Ind. Ap. Ca. 75) approved. RUNJEET SINGH *v.* KOOER GUJRAJ SINGH - - - i. 9

68. —— *Agreement to Partition—Construction—Metes and Bounds.*] Where a question arises whether an arrangement among the members of a Hindu family not attended with actual partition by metes and bounds, has the effect of a division in estate; the Court will, in determining such question, consider whether the intention of the parties to be inferred from the instruments which they have executed and the acts they have done, was to effect such a division.—Circumstances under which an intention to effect a separation has been inferred.—The case of *Appovier* v. *Rama Subba Aiyan* (11 Moore's Ind. Ap. Ca. 75) followed. BABOO DOORGA PERSHAD *v.* MUSSUMAT KUNDUN KOOWAR - - - - - - i. 55

69. —— *Decree for Partition, Effect of.*] Although a suit does not actually in terms seek a partition, yet if it indicates a distinct intention, and the decree gives effect thereto, of obtaining a separation in estate, such decree effects a partition, at least as regards the joint title.—*Appovier* v. *Rama Subba Aiyan* (11 Moore's Ind. Ap. Ca. 75) approved. JOY NARAIN GIRI *v.* GRISH CHUNDER MYTI - - - - - - v. 228

70. —— *Declaratory Decree of Right to Partition, Effect of.*] In a partition suit the judgment found that the estate was partible, and that the Plaintiff was entitled to a moiety thereof subject to such charges as might thereafter be found to be binding. Whether or not a decree was framed the judgment was treated in the subsequent proceedings as equivalent to a declaratory decree determining that there was to be a partition of the estate into moieties:—*Held*, that this amounted to a partition, and that on the death of the Plaintiff his share passed to his own representatives in the course of succession to separate estate and not by survivorship to his co-sharers. CHIDAMBARAM CHETTIAR *v.* GOURI NACHIAR vi. 177

71. —— *Partition—Mesne Profits.*] In a suit for partition by three out of six sons of a deceased zemindar against the eldest son (two brothers being parties Defendant), who wrongly contended that the zemindary was impartible:—*Held*, that the Plaintiffs should recover their moiety of the zemindary together with the mesne profits accruing thereon for the period of their dispossession thereof, such period not to exceed three years next before the commencement of the suit, and the amount of such mesne profits to be subject to an allowance for all or any portion thereof as might be proved by the Defendants to have been duly applied for the benefit of the joint family. RAJAH VENKATA KANNAKAMMA ROW *v.* RAJAH RAJAGOPALA APPA ROW BAHADUR - ix. 125

—— Amongst widows - iv. 212; xvi. 186
See HINDU LAW. 87, 94.

IX. HINDU LAW—REVERSIONARY HEIRS.

72. —— *Suit to set aside Adoption—Reversionary Heirs, Remote and Presumptive—Oudh Talukdari Right.*] In a suit by the deceased's father's brother's daughter's son against the widow of the deceased and her alleged adopted

IX. HINDU LAW—REVERSIONARY HEIRS—*continued.*

son, to set aside the adoption, and a decree declaratory thereof alleged to have been obtained by the Defendants by fraud and collusion:—

Held, overruling the decision of both the Courts below, that the suit must be dismissed; Plaintiff being a contingent remote reversionary heir who had neither alleged nor proved that there were no nearer reversionary heirs in existence, or that they had precluded themselves from suing. The right to bring such a suit is limited, and, as a general rule, belongs to the presumptive reversionary heir. If such nearest heir refuses without sufficient cause to sue, or has precluded himself by his own act or conduct from suing, or has colluded with the widow, or concurred in the act alleged to be wrongful, the next presumable reversioner would, on proof thereof, and subject to the discretion of the Court, be entitled to sue.—*Brikaji Apagi* v. *Jagannath Vithal* (10 Bombay H. C. R. 351) approved.

Quære, whether the nearer reversioner would not in such suit be a necessary party.—It appearing that the Plaintiff was an *Oudh* talookdar, and that the widow was entitled to an under proprietary tenure upon his estate, and by her adoption had purported to transfer such undertenure, *held*, that Plaintiff had not by virtue of his talookdary such a reversionary interest in the undertenure as would entitle him to bring this suit. RANEE ANUND KOER *v.* COURT OF WARDS ON BEHALF OF CHUNDRA SHEKHAR [viii. 14

—— Widow's grant to reversionary heirs xix. 30
See HINDU LAW. 96.

—— - - - - xx. 183; ix. 59
See HINDU LAW. 99, 104.

X. HINDU LAW—SELF-ACQUIRED ESTATE.

73. —— *Self-acquired Estate—Impartibility.*] *Held*, that a mode of acquisition which constitutes a property as self-acquired in the hands of a member of an undivided family, and thereby subjects it to rules of devolution or disposition different from those applicable to ancestral property, does thereby destroy its character of impartibility. The *Hunsapore Case* (12 Moore's Ind. Ap. Ca. 1) approved. MUTTA VADUGANADHA TEVAR *v.* DORASINGA TEVAR - - viii. 99

XI. HINDU LAW—STRIDHAN.

74. —— *Stridhan—Succession.*] Under the law of the Mitakshara a daughter's estate inherited from the father is a limited and restricted estate and not stridhan. Upon her death the next heirs of her father succeed thereto. CHOTAY LALL *v.* CHUNNO LALL - - - vi. 15

75. —— *Stridhan—Succession.*] *Held*, that under sect. 22, cl. 11, of Act I. of 1869, the taluqa in suit, which was the separate property of the widow, descended, in the absence of a proved custom of her tribe to the contrary, to her daughter, in preference to the son of the daughter of a rival widow and the remote male heirs of her husband. BRIJ INDAR BAHADUR SINGH *v.* RANEE JANKI KOER - - - - vii

XII. HINDU LAW—SUCCESSION BY FEMALES.

76. —— *Daughter's Son — Grandmother — Maternal Aunts—Daughter—Childless Widowed Daughter — Disqualification after Estate has Vested.*] In a suit by a daughter's son, brought in 1858, to recover his maternal grandfather's share in the ancestral estates from his maternal aunts and the heirs of his maternal granduncles, the former filed a petition admitting the Plaintiff's title as heir, the latter pleaded (amongst other things), first, that since the death of the grandfather in 1824 neither the Plaintiff nor his grandmother, mother, nor maternal aunts were in possession, and that therefore the suit was barred; secondly, in effect that the Plaintiff was not entitled to succeed:—

Held, first, that the suit was not barred. The grandmother, who died in 1835, lived and was maintained as a member of the joint family (*Bengal* school), and the presumption is that she participated in the profits of the estate as a sharer. Limitation ran from her death, and deducting the periods during which the Plaintiff and his mother were respectively under the disability of minority, the suit was in time.

Secondly, as to the Plaintiff's title. Any admission thereof by the maternal aunts would neither bind the co-Defendants, nor be evidence against them. The petition above named did not amount (even if its execution had been proved) to a conveyance or to a disclaimer of title, nor did it warrant a judgment against them.

A daughter's son is not entitled by Hindu law to succeed as heir to his maternal grandfather's estate, so long as any daughter not disqualified, or in whom a right of inheritance has once vested, survives.

Although a daughter, who is a childless widow, is incompetent, according to the *Bengal* school, to take by inheritance from her father, yet where two daughters have already succeeded jointly by inheritance to their father's estate, and at the death of one of them the survivor is a childless widow, the latter will nevertheless take by survivorship the whole estate. Her disqualification to inherit existing at the death of her sister, does not destroy the heritable right which has once vested, nor the right of succession by survivorship to her sister, which is incident thereto. AUMIRTOLALL BOSE *v.* RAJONEEKANT MITTER - - - - - ii. 113

77. —— *Daughter, Succession of—Impartible Estate.*] Under the Mitakshara law, as applied in the *Carnatic*, a daughter takes by inheritance a limited estate in her father's property, and on her death his heirs succeed.—*Chotay Lall* v. *Chunno Lall* (Law Rep. 6 Ind. Ap. 15) approved:—*Held*, on the evidence with regard to the zemindary in suit that it was impartible.—Although in the *Nuzvid Case* (Law Rep. 7 Ind. Ap. 38) it was held that a zemindary created by sunnud in 1803, in accordance with Regulation XXV. of 1802, was a partible property; yet in this case the zemindary was reinstated by Proclamation in 1801 in his previously impartible zemindary, and the quality of impartibility was not transmuted by the Regulation (which was framed merely with a view to land revenue), and

XII. HINDU LAW—SUCCESSION BY FEMALES —*continued.*

could not be and was not transmuted by the sunnud of 1803.—*Held*, further, that a mode of acquisition which constitutes a property as self-acquired in the hands of a member of an undivided family, and thereby subjects it to rules of devolution or disposition different from those applicable to ancestral property, does thereby destroy its character of impartibility.—The *Hunsapore Case* (12 Moore's Ind. Ap. Ca. 1) approved. MUTTA VADUGANADHA TEVAR *v.* DORASINGA TEVAR - - - viii. 99

78. —— *Succession by Females—Impartible Estate.*] A female cannot inherit an impartible ancestral estate belonging to a Hindu joint family governed by the Mitakshara when there are any male members of the family who are qualified to succeed as heirs. *Maharani Hiranath Koer* v. *Baboo Ram Narain Singh* (9 Beng. L. R. 274) approved. RAJAH RUP SINGH *v.* RANI BAISNI AND THE COLLECTOR OF ETAWAH xi. 149

79. —— *Maiden Daughter—Indigent married Daughter.*] According to Hindu law as it obtains in Benares, failing a maiden daughter the succession to a deceased father's estate devolves on an indigent married daughter, and her right of succession is not lost by reason of her becoming a childless widow. SRIMATI UMA DEYI *v.* GOKOOLANUND DAS MAHAPATRA - - v. 40

—— Widow's succession - iv. 212; vii. 212; [viii. 1; xvi. 186

See HINDU LAW. 87, 89, 91, 94.

XIII. HINDU LAW—SUCCESSION BY MALES.

80. —— *Father's Sister's Son—Bandhu—Appointed Daughter.*] The great-grandson of the deceased's great-great-great-grandfather is by Hindu law entitled to succeed in preference to the father's sister's son.—The latter, even if the fictitious substitution by a sonless father of an appointed daughter, or of her son, were still recognised, cannot set up that his mother was appointed after her father's death as a special daughter from whom might proceed a son who should stand in the place of a son's son. Even if her father could himself have so appointed, he could not have delegated such appointment to his sons. THAKOOR JEEBNATH SINGH *v.* THE COURT OF WARDS - - - ii. 163

81. —— *Brothers—Half-brothers.*] According to the Dayabhaga a brother of the whole blood in a joint family succeeds in preference to a brother of the half-blood to the share of a deceased brother.—*Rajikshore Lahoory* v. *Gobind Chunder Lahoory* (I. L. R. 1 Calc. 27; 24 Suth. W. R. 234; and note *infra*, p. 153) approved. SHEO SOONDARY *v.* PIRTHEE SINGH - iv. 147

82. —— *Deaf and Dumb Brother—Waiver of Rights on co-Sharer's Disqualification.*] *Held*, reversing the judgment of the High Court on this point, that a clear recognition of a Hindu deaf and dumb brother by his co-sharer, as being entitled to equal rights of inheritance after his incapacity to inherit must have become apparent, does not operate to create a new title in him either by way of family arrangement or by virtue of the law of limitation. To create such new

XIII. HINDU LAW—SUCCESSION BY MALES—*continued.*

title a clear intention to waive the rights accruing from such incapacity must be proved, and will not be inferred from acts which may have been done out of kindness and affection. LALA MUDDUN GOPAL LAL *v.* MUSSUMAT KHIKHINDA KOER - - - - - xviii. 9

83. —— *Daughter's Son — Daughter.*] A daughter's son is not entitled by Hindu law to succeed as heir to his maternal grandfather's estate so long as any daughter not disqualified or in whom a right of inheritance has once vested survives. AUMRTOLALL BOSE *v.* RAJONEEKANT MITTER - - - - - ii. 113

84. —— *Priority amongst Sapindas.*] By the Hindu law of *Western India* the preferential right to inherit in the classes of sapindas is to be determined by family relationship or the community of corporal particles and not alone by the capacity of performing funeral rites. LULLOOBHOY BAPPOOBHOY, CASSIDASS MOOLCHUND *v.* CASSIBAI - - - - - vii. 212

—— - - - - - vi. 15

See JAIN LAW. 1.

XIV. HINDU LAW—WIDOW.

85. —— *Maintenance—Widow's Duty as to Residence—Arrears of Maintenance.*] A Hindu widow is not bound to reside with the relatives of her deceased husband; and she does not forfeit her right to property or maintenance merely on account of her going and residing with her family or leaving her husband's residence for any other cause than unchaste or improper purposes.—Arrears of maintenance may be awarded to a widow as well as a decree for future maintenance. RAJAH PIRTHEE SINGH *v.* RANEE RAJ KOWER - - - - Supp. 203

86. —— *Widow's Estate — Accumulations of Husband's Estate—Construction of Grant to Widow.*] A Hindu widow has no greater power of alienation over the profits than she has over the *corpus* of her husband's estate: whatever she purchases out of those profits is an increment to that estate; *secus*, where she holds under a deed which in express terms gives her an estate for life with a power to appropriate the profits.—Such a deed must be construed according to the plain ordinary meaning of its terms; and words may not be imported into it, from any conjectural view of its intention, which would have the effect of materially changing the nature of the estate thereby created.—*Sreemutty Rubutty Dossee* v. *Sibchunder Mullick* (6 Moore's Ind. Ap. Ca. 1) explained. MUSSUMAT BHAGBUTTI DAEE *v.* CHOWDRY BHOLANATH THAKOOR - - ii. 256

87. —— *Widow's Rights inter se—Partition.*] According to the Mitakshara law, as it prevails in *Southern India*, two or more lawful wives (patnis) take a joint estate for life in their husband's property, with rights of survivorship and equal beneficial enjoyment.—Although widows so taking have no right to enforce an absolute partition of the joint estate between them, they have power to arrange for separate enjoyment of their shares, their respective rights by survivorship and otherwise remaining unaffected.—*Jijoyiamba Bayi Saiba* v. *Kamakshi Bayi Saiba* (3 Madras, H. C. R. 424) affirmed. SRI GAJAPATHI NILAMANI PATTA MAHA DEVI GARU *v.* SRI GAJAPATHI RADHAMANI PATTA MAHA DEVI GARU - iv. 212

XIV. HINDU LAW—WIDOW—*continued.*

88. —— *Widow — Forfeiture — Unchastity.*] Under the Hindu law, as administered in the *Bengal* school, a widow who has once inherited the estate of a deceased husband is not liable to forfeit that estate by reason of unchastity. MONIRAM KOLITA *v.* KERRY KOLITANY vii. 115

89. —— *Widow's Succession—Widow of Paternal First Cousin—Gotraja-sapindas in the Seventh Degree.*] The Hindu law of inheritance, as it has actually prevailed in *Western India*, recognises and affirms the right of a widow to inherit as a gotraja-sapinda to members of her husband's family; and there is no sufficient reason for holding that the doctrine to that effect which has so prevailed should not have the force of law. By that law the preferential right to inherit in the classes of sapindas is to be determined by family relationship, or the community of corporal particles, and not alone by the capacity of performing funeral rites:—*Held*, in this case, that by that law the widow of a paternal first cousin of the deceased became by her marriage a gotraja-sapinda of the deceased, and is entitled to succeed to the estate in preference to male gotraja-sapindas who are seventh in descent from the common ancestor of them and the deceased, which common ancestor is sixth in ascent from the deceased. LULLOOBHOY BAPPOOBHOY, CASSIDASS MOOLCHUND *v.* CASSIBAI - vii. 212

90. —— *Mortgage by Widow of Husband's Estate—Execution of Deed—Justifying Necessity.*] *Held*, that there being a total failure of proof as to the proper explanation of a deed of mortgage to a Hindu widow at the time of her execution thereof, and therefore as to her intention to transfer thereby her husband's estate, the deed was inoperative in that respect. Otherwise, in order to bind the husband's estate the mortgagor is bound at least to shew the nature of the transaction, and that in advancing his money he gave credit on reasonable grounds to an assertion that the money was wanted for one of the necessities recognised by Hindu law as justifying such transactions.—*Hunooman Persaud Pandy* v. *Mussumat Babooee Munraj Koonwaree* (6 Moore's Ind. Ap. Ca. 393) approved. BABOO KAMESWAR PERSHAD *v.* RUN BAHADOOR SINGH - - - viii. 8

91. —— *Wives, Priority amongst—Sons by different Wives, Priority amongst—Caste.*] An elder-born son though of the junior wife is entitled to succeed to the father's estate in preference to the younger-born son of the elder wife.—*Ramalakshmi Ammal* v. *Sivanantha Perumal* (14 Moore's Ind. Ap. Ca. 570; Law Rep. Ind. Ap. Sup. Vol. p. 1) approved. A first-born son, though by the fourth wife, is entitled to succeed to the father's estate in preference to a younger son born of the third and senior wife, whose marriage was subsequent to the deaths of the first two wives.—*Quære*, where the wives are of a different class or caste.—*Quære*, also, whether the third wife, who was not married till after the deaths of the two former wives, stands in the

position of a first-married wife. PEDDA RAMAPPA NAYANIVARU *v.* BANGARI SESHAMMA NAYANIVARU [viii. 1

92. —— *Widow—Decree against Widow—Mesne Profits.*] A decree against a Hindu widow as representing her husband's estate binds her minor adopted son, and after the adoption the appeal, being for his benefit, must be considered as prosecuted on his behalf even though he is not made a party thereto.—*Dhurm Das Pandey* v. *Mussumat Shama Soondri Dibiah* (3 Moore's Ind. Ap. Ca. 229) followed.—So *held*, where title was in dispute.

There may also be a decree for mesne profits against a minor who is not a party if it appear that it is substantially against him though formally against his guardian.—*Suresh Chunder Wum Chowdhry* v. *Jagut Chunder Deb* (Ind. L. R. 14 Calc. 204) approved. HARI SARAN MOITRA *v.* BHUBANESWARI DEBI - - - xv. 195

93. —— *Widow, Absolute Gift by—Local Custom as to Alienation.*] *Held*, that upon the evidence a local custom was established whereby a sharer in Hindu family property or his wife could in the absence of male issue give his share to his daughter or daughter's son, and thereby defeat the preferential right of his brothers' sons.—*Held*, that a gift by the widow of her husband's share as authorized by the custom was an absolute gift and not merely of her widow's estate.—Where such gift was to her daughter and daughter's husband jointly, *held*, that the gift was invalid as regards the latter, but that the daughter took the whole.—*Humphrey* v. *Tayleur* (Amb. 138) held to be applicable. NANDI SINGH *v.* SITA RAM - - - xvi. 44

94. —— *Widows' Interest in Husband's Estate—Partition—Adoption of Sister's Son.*] Where Hindu widows are in lawful possession of the property of their deceased husband, they have an estate or interest therein in respect of their possession, notwithstanding that under an adoption or a will by the deceased a preferable title thereto may exist.—Such estate being joint is also partible and either widow may maintain a suit for partition.—*Semble*, the adoption of a sister's son is invalid. MUSSAMUT SUNDER *v.* MUSSUMAT PARBATI - - - xvi. 186

95. —— *Widow—Justifying Necessity—Rate of Interest.*] Where a widow has borrowed under necessity, the stipulated rate of interest may be reduced if it was unreasonable for the lender to suppose that she could not have borrowed at a lower rate under the circumstances. RAJAH HURRONATH ROY BAHADOOR *v.* RUNDHIR SINGH [xviii. 1

96. —— *Widow's Grant to Reversionary Heir—Surrender of Widow's Estate.*] Where a Hindu widow executed an ikrarnamah in favour of her daughter's son, then the apparent reversionary heir, in which she transferred to him the management of her husband's property, but did not surrender her widow's estate therein:—*Held*, as regards the immoveable property sued for, that such daughter's son could not after the widow's death maintain title in exclusion of another daughter's son, born after the date of the ikrarnamah, who at the death of the widow became entitled as one of her husband's reversionary heirs.

According to Hindu law, in order to accelerate the estate of the reversionary heir, a widow must convey to him her estate absolutely. BEHARI LAL *v.* MADHO LAL AHIR GYAWAL xix. 30

97. —— *Widow's Mortgage—Justifying Necessity—Onus Probandi—Execution of Deed.*] To prove the validity of a mortgage by a Hindu widow of her husband's estate the burden of proof is on the mortgagee, to shew either that there was a legal necessity therefor, or, at least that, in advancing his money he gave credit on reasonable grounds to representations that the money was wanted for such necessity.—*Hunooman Persaud Panday* v. *Munraj Koonweree* (6 Moore's Ind. Ap. Ca. 393) followed.—Where as against the daughter, who had joined in the said mortgage, a subsequent deed of ratification was relied upon, *held*, that there being no evidence that in signing such deed she understood that she was subjecting her expectant estate to a burden which she was gratuitously undertaking, she was not bound thereby. LALA AMARNATH SAH *v.* RANI ACHAN KUAR - - - - - xix. 196

98. —— *Widow—Accumulation.*] Where a sonless Hindu widow received from the executor of her husband's will a fund representing the accumulated income of his estate for eight years after his death, and undisposed of by the will, claiming the same as her absolute property, and the executor, who was also reversionary heir to the deceased, assented to her so receiving it, and admitted her absolute interest:—*Held*, that the fund passed to the Respondent under a deed of trust in his favour executed by the widow. SOWDAMINEE DOSSEE *v.* ADMINISTRATOR-GENERAL OF BENGAL - - - - - xx. 12

99. —— *Decree against Widow—Decree against Daughter—Reversioners.*] The rule in the *Shivagunga Case* (9 Moore's Ind. Ap. Ca. 539) to the effect that an adverse decree against a Hindu widow binds those claiming in succession applies equally to the case of a daughter. HURRINATH CHATTERJI *v.* MOHUNT MOTHOOR MOHUN GOSWAMI - - - - - - xx. 183

—— - - - - - - v. 55

See HINDU LAW. 62.

—— - - - - - - xix. 1

See ONUS PROBANDI. 6.

—— - - - - - x. 150

See DECLARATORY DECREE. 6.

XV. HINDU LAW—WIDOW'S ESTATE.

100. —— *Sale of Widow's Estate.*] Where a widow's estate is sold, in execution of a decree against her personally, for arrears of maintenance payable by her, although chargeable under the Mitakshara law on the estate of her deceased husband, it is only the widow's estate which passes to the purchaser. BAIJUN DOOBEY *v.* BRIJ BHOOKUN LALL AWUSTI - - ii. 275

101. —— *Widow—Accumulations.*] Where a Hindu widow invests the accumulations from her deceased husband's estate, *primâ facie* it is her intention that they should be regarded as accretions thereto, and not as a separate estate

XV. HINDU LAW—WIDOW'S ESTATE—*contd.*

descendible in a different line of succession.—*Isridut Koer* v. *Mussumat Hansbutti Koerain and Others* (Law Rep. 10 Ind. Ap. 150) followed. BABU SHEO LOCHUN SINGH *v.* BABU SAHIB SINGH [xiv. 63

102. —— *Widow's Mortgage without Consent of co-Widow—Rights of Widows inter se.*] A mortgage by a Hindu widow even for necessary purposes without the concurrence of her co-widow is not binding upon the joint estate which has descended from their deceased husband so as to affect the interest of the co-widow.—*Quære*, whether a case for borrowing without the co-widow's consent could be established so as to empower one widow so to bind the estate; certainly it cannot where the concurrence of the co-widow was not even applied for. In this case the mortgage on its true construction did not purport to bind the whole estate. SRI GAJAPATI RADHAMANI GARU *v.* MAHARANI SRI PUSAPATI ALAKARAJESWARI - - - xix. 184

103. —— *Widow—Res Judicata—Oudh Talukdars' Relief Act, s.* 25—*Practice in Privy Council—Parties.*] Where by the terms of her husband's will a Hindu widow is the full representative of his estate; *held*, that a decree against her declaring that the will was revoked, and that the Appellant was entitled to succeed *ab intestato*, bound the Respondent whose claim was by appointment from the widow under the will, whether or not he was a party to the suit in which the decree was made.

Quære, whether the Respondent who had been as a minor made a party and personally served with a summons in the original suit, and who, having attained his majority and as transferee of the estate from the widow, prosecuted the appeal to Her Majesty in Council, should be deemed a party thereto and bound as a party by the final order of Her Majesty in Council.

Where a manager has been appointed under the *Oudh Talukdars' Relief Act*, *held*, that sect. 25 does not render a judgment in a suit relating to succession void, as between the parties contesting the right to succession, merely because the manager has not been made a party to the suit. PARTAB NARAIN SINGH *v.* TRILOKINATH SINGH [xi. 197

104. —— *Widow—Sale of Widow's Right, Title, and Interest—Decree against Widow.*] By Hindu law the husband's estate vests in his widow absolutely for some purposes, though in other respects for a qualified interest.

When a Hindu widow's right, title, and interest is sold in execution of a decree, the Court is at liberty to look to the judgment to ascertain what was sold thereunder.

Where it appeared from the judgment that the decree against the widow was in respect of the husband's estate, and bound the reversionary heir, *held*, that the purchaser of her right and interest in execution took the estate absolutely. GOOROO DAS PYNE *v.* RAM NARAIN SAHOO xi. 59

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See HINDU LAW. 96.

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See DECLARATORY DECREE. 6.

XVI. HINDU LAW—WILLS.

105. —— *Wills — Declaration of Future Rights.*] Where all existing parties interested under a will are in Court a declaration as to future rights after the determination of the life interest may be made. *Lady Langdale* v. *Briggs* (8 De M. & G. 391) distinguished. TAGORE *v.* TAGORE - - - - - Supp. 47

106. —— *Construction of Will—Gift to Widow with Remainder to Daughters—Sale by Widow—Justifying Necessity.*] *H. R.*, a Hindu inhabitant of *Behar*, by a document of a testamentary character, after reciting that the property of which he was about to dispose was ancestral property, and reciting the deaths of his only son, of his brother without leaving issue, his brother's wife, and his own wife, declared "only *D. K.*, widow of my son, who, too, excepting her two daughters, born of her womb, *S.* and *D.*, has no other heirs, is my heir. Except *D. K.*, none other is nor shall be my heir and malik." . . . "Furthermore, to the said *D. K.*, too, these very two daughters named above, together with their children, who, after their marriage, may be given in blessing to them by God Almighty, are and shall be heir and malik."—After *H. R.*'s death, *D. K*, in 1854, sold part of the ancestral lands to the Appellant for Rs.41,000, of which Rs.14,000 were devoted to pay off a mortgage thereon.—*S.* predeceased the testator without issue; and subsequently to the testator's death *D.* died, leaving an only son, the Respondent.

In a suit by the Respondent against the Appellant and *D. K.* for a declaratory order preserving unmolested his future right and title to the said lands, and for cancellation of the deed of sale:—*Held*, first, that the intention of the testator must be construed to have been that *D. K.* should take not an absolute estate, but an estate subject to her daughters succeeding her therein; secondly, that her sale to the Appellant not having been made under necessity the Respondent was entitled to a decree to the effect that after *D. K.*'s death the property belongs to him, and to be put in possession thereof after *D. K.*'s death on payment to the Appellant of the sum of Rs.14,000. MOULVIE MAHOMED SHUMSOOL HOODA *v.* SHEWUKRAM - - - ii. 7

107. —— *Construction of Will—Adopted Son—Ceremonies of Adoption—Persona designata.*] *G.*, a childless Hindu, by his will directed as follows: "And as I am desirous of adopting a son, I declare that I have adopted *K.*, third son of my eldest brother. My wives shall perform the ceremonies according to the Shastras, and bring him up, and until that adopted son comes of age, those executors shall look after and superintend all the property moveable and immoveable, in my own name or benami, left by me, also that adopted son. When he comes to maturity the executors shall make over everything to him to his satisfaction." . . . "God forbid, but should this adopted son die, and my younger brother *Nilruttun* have more than one son, then my wives shall adopt a son of his. If at that time *Nilruttun* has not a son eligible to adoption, they shall adopt another son of *Saroda*, and the wives and executors shall perform all the afore-mentioned acts."

XVI. HINDU LAW—WILLS—*continued.*

In a suit by one of *G.'s* widows, as heir of her husband, to set aside his will and recover half his property, it appeared that the above-mentioned ceremonies had been performed by one widow only:—*Held*, that according to the true construction of the will (which was established by the evidence) there was a gift of his property by the testator to a designated person, independently of the performance of the ceremonies.

Quære, whether the performance of the ceremonies was essential to the completeness of the adoption; and if so, whether one widow was effectually empowered to perform them. NIDHOOMONI DEBYA *v.* SAHODA PERSHAD MOOKERJEE [iii. 253

108. —— *Construction of Will—Bequest to Members of Joint Family—Void inconsistent Conditions.*] A Hindu testatrix, after creating a charge upon the property, the subject of her will, for the expenses of various religious acts and ceremonies, directed that "after all these acts have been observed from the proceeds of the said property, if there be a surplus, then the family will be supported therefrom;" and, further, that "this property of mine will not be liable for the debts of any person. None will be able to transfer it. None will have the rights of gift and sale":—*Held*, that the former direction amounted to a bequest of the surplus to the members of the joint family for their own use and benefit, the share of each member being capable of being ascertained and of being attached in execution by his creditors; and that the latter directions, being inconsistent with the interest given, were wholly beyond the testatrix's power, and must be rejected as having no operation. ASHUTOSH DUTT *v.* DOORGA CHURN CHATTERJEE - - vi. 182

109. —— *Wills—Revocation of Will—Verbal authority to Destroy Will—Parol Revocation.*] A verbal authority given by a Hindu testator to a third party to destroy his will, although the instrument is not in fact destroyed is sufficient in law to constitute a revocation. *Semble*, a declaration by a testator to the principal officer of the district of his desire that the Appellant should succeed him by virtue of a newly passed statute (Act 1 of 1869) and in supersession of his will would have been in law a sufficient parol revocation of his will. MAHARAJAH PEETAB NARAIN SINGH *v.* MAHARANEE SABHAO KOOER [iv. 228

110. —— *Construction of Will—Putra poutrádi kramé—Estates of Inheritance—Conditional gift over — Conditions Subsequent — Declaration of Future Rights not made.*] A Hindu died leaving a widow, a daughter's daughter, and a brother. His will, after providing that his widow should take an ordinary Hindu widow's estate in the whole of his property (subject to certain bequests), directed as follows:—7. If no daughter or daughter's son of mine should be living at the time of the death of my wife, then my granddaughter (daughter's daughter) shall become the proprietress of my property, and shall remain in undisputed possession thereof from generation to generation.—8. If the death of my wife should take place before my granddaughter (daughter's daughter) arrives at majority, and bears a son, then the whole of the estate shall remain in charge of the Court of Wards until she arrives at majority and bears a son.—9. If my granddaughter (daughter's daughter) should be barren or a sonless widow, or if she should be otherwise disqualified, she shall not become entitled to my property, but shall receive an allowance of Rs.300 per mensem for life.—20. If no son or daughter should be born to me, or if my granddaughter (daughter's daughter) should die before she bears a son, or if she should be barren or become a sonless widow, or be otherwise disqualified, then the whole of my properties shall pass into the hands of the Government. The whole of the profits of my estate which shall remain as surplus after the expenses connected with the various matters specified above have been defrayed, shall be employed by the Government as it thinks proper, in the improvement of the school and dispensary and in alleviating the sufferings of the blind, the lame, the poor, and the helpless of my native village and of the neighbouring villages.

In an administration suit by the Secretary of State against the brother, the widow, and granddaughter, it was contended by the brother that no part of the will was effectual except that which gave the estate to the widow for life:—*Held*, that clause 7, if it stood alone, would confer an absolute estate on the granddaughter upon the death of the widow.—The words *putra poutrádi kramé* (from generation to generation), though importing the male sex in their primary signification, apply also to the female heirs of a female where by law the estate would descend to such heirs; and are apt for conferring an estate of inheritance upon either male or female. Clauses 8 and 9 may be read together, and the disqualification must operate at the death of the widow.—Clause 20 should be read as supplementary to clause 9, and under it the gift over to the Government takes effect, if at all, at the death of the widow, in the event of the granddaughter predeceasing her before bearing a son or being disqualified at such death.

Quære, whether the disqualifications, if they had been conditions subsequent to the vesting of the estate in the granddaughter, would or would not have been in violation of Hindu law.—The case of the granddaughter predeceasing the widow and having borne a son not being provided for by the will, their Lordships declined to declare the rights of the parties in such contingent event, no judgment which they could give being able to affect the rights, if any, of such unborn son.—*Lady Langdale* v. *Briggs* (8 D. M. & G. 391) as explained in the *Tagore Case* approved. RAMLALL MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA - - - - - viii. 46

111. —— *Construction of Will—Life Estate—Void Estates of Inheritance — Gift over.*] A Hindu by will gave to his three nephews certain estates "for payment of the expenses of their pious acts." The gift was in these terms:—"The said three nephews shall hold possession of the same in equal shares and shall pay the Government revenue of the same into the Collectorate. They shall have no right to alienate the same by gift or sale; but they, their sons,

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grandsons, and other descendants in the male line shall enjoy the same, and shall perform acts of piety as they respectively shall see fit for the spiritual welfare of our ancestors. If any of them die without leaving a male child (which God forbid) then his share shall devolve on the surviving nephews and their male descendants, and not on their heirs."

In a suit by the surviving nephew against the infant son of the testator, *held*, on the authority of the *Tagore Case* (Supp. 47), that a life estate was only created in favour of the three nephews. The attempt to create an estate of inheritance in their favour failed; since to exclude females from the succession was to exclude the legal course of inheritance:—

Held, further, that on the death of the first nephew his share went to the other two, and that on the death of the second the share which he left behind him made up of his original and his accrued share went to the Plaintiff. KUMAR TARAKESWAR ROY *v.* KUMAR SHOSHI SHIKHARESWAR - - - - - - x. 51

112. —— *Construction—Perpetuity—Restraint on Alienation.*] Where it clearly appeared that a Hindu testator's intention was that his estate itself should not be disposed of, but to make a gift simply with reference to the enjoyment of the profits, the object being to create a perpetuity as regards the estate, and to limit for an indefinite period the enjoyment of the profits of it:—*Held*, that by Hindu law the whole will was invalid. SOOKHMOY CHUNDER DASS *v.* SRIMATI MONOHURRI DASI - - - - - - xii. 103

113. —— *Construction—Void Restrictions—Gift over—Gift to an Indefinite Class.*] Case in which it was held by the High Court, without dissent by their Lordships, that by the true construction of three wills there was a valid gift of the testator's property in equal shares to his six sons; that restrictions imposed by the second and third wills upon the proprietary interest conferred by the first will, that is, upon the right of possession, alienation, and partition, were illegal and inoperative; and that such provisions as tended to create a perpetuity were invalid.

Where a testator directed that the share of a son dying should go to the surviving sons, but also directed that for the purposes of the gift over the sons of a predeceased son or sons should stand in the place of their fathers:—*Held*, that these are two separable provisions, and that in regard to the share of a son dying, where there are no sons of a predeceased brother in existence, there is a valid gift over to the survivors, whether or not the second provision would have been void as being a gift to an indefinite class. RAIKISHORI DASI *v.* DEBENDRANATH SIRCAR [xv. 37

114. —— *Construction—Maharani Sahiba—Extrinsic Evidence.*] *Held*, that the expression "Maharani Sahiba" according to the true construction of the will in which it was contained was not a collective term comprehending both widows of the testator but applied to the senior widow alone except where the expression was qualified so as to leave no doubt that both were intended:—*Held*, further, that extrinsic evidence

XVI. HINDU LAW—WILLS—*continued.*

of the testator's intention ought not to be admitted. That construction should be adopted which gives effect to the more reasonable and probable intention, having regard to the scheme of the will and the circumstances of the testator. *Abbott* v. *Middleton* (7 H. L. C. 89) approved. MAHARANI INDAR KUNWAR *v.* MAHARANI TAIPAL KUNWAR - - - - - - xv. 127

115. —— *Construction—Void Estates of Inheritance—Gift over—Estates subject to Defeasance.*] A Hindu cannot create an estate of inheritance unknown to the Hindu law. He may, however, create an absolute estate subject to be defeated by a subsequent event, provided, first, that the event must happen if at all immediately on the close of a life in being at the time of the gift; secondly, that the gift over must be in favour of somebody in existence at the time of the gift.

A Hindu testator gave the residue of his estate to his executors in trust to pay the rents and profits thereof to his daughter during her lifetime, after her death in trust to pay, assign, and convey the residue to his two half-brothers in equal moieties, and to the heir or heirs male of their or either of their body, in failure of which in trust to give the same to the son or sons of his daughter.

In a suit by the daughter after the death of one of the half-brothers against the surviving half-brother, his six surviving sons and the representative of one deceased, the two sons of the deceased half-brother, and her own six sons: it appeared that both half-brothers survived the testator, that three sons of the surviving brother, including one deceased, were born during the testator's lifetime, the remaining four, together with the sons of the deceased brother, were born after his death, and that the six sons of the Plaintiff were also born after his death:—

Held, that, according to the true construction of the will, the gift of the residue so far as it purported to confer an estate of inheritance on the testator's half-brothers and the heirs male of their bodies was contrary to law and void; that in the events which happened the gift to the Plaintiff's sons was incapable of taking effect; that each of the half-brothers took an estate for life in one moiety of the residue in remainder expectant on the death of the Plaintiff; that on the death of the half-brother the inheritance of his moiety devolved on the Plaintiff as her father's heir. SREEMUTTY KRISTOROMONEY DOSSEE *v.* MAHARAJAH NORENDRO KRISHNA BAHADOOR [xvi. 29

116. —— *Construction—Gift to Son on coming of Age—"If my son dies"—Dakhilkar—Authority to Adopt—Estate vested in Son's Widow.*] The following points were ruled in construing the will of a Hindu testator:—(*a*) A direction to make over the estate to the son when he comes of age is equivalent to a gift to him to take effect at that time.—(*b*) A provision to meet the contingency "if my son dies" in order to be consistent with an absolute gift on his attaining majority must mean "if my son dies during minority."—(*c*) "Dakhilkar," though ordinarily meaning "occupant," must be construed in

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reference to the context and *held* to mean possessor and manager, though without beneficial interest:—*Held*, that the testator's widow took no power to adopt under the will in the event which happened, viz., of his estate having vested in his son and afterwards in the son's widow.—*Thayammal* v. *Venkatarama Aiyan* (Law Rep. 14 Ind. Ap. 67) followed. TARACHURN CHATTERJI *v.* SURESH CHUNDER MOOKERJI - - xvi. 166

HOUSES IN LUCKNOW - - - vi. 76
See OUDH LAW. 2.

HYPOTHECATION OF LAND - - iii. 1
See LIMITATION. 7.

IDENTITY OF REFORMED LAND xiv. 101; [ii. 28
See ACCRETION. 1, 6.

"IF MY SON DIES" - - - xvi. 166
See HINDU LAW. 116.

IKRARNAMAH - - - - iv. 101
See CONTRACT. 4.

—— - - - - - x. 129
See POTTAH. 4.

ILLEGAL ARREST AND DETENTION—*Lunatic—Bonâ fide Arrest of Lunatic—Act XVIII. of* 1850—*Act XXXVI. of* 1858—*Damages.*] Act XVIII. of 1850 is an Act for the protection of judicial officers acting judicially and of officers acting under their orders.—In a suit against the officer in command of the military cantonments in *Lucknow* for damage to the Plaintiff, in consequence of the Defendant having put him under an unlawful arrest and having wrongfully confined him in his own premises for three successive days, and for having caused violence to be used to his person and property; it appeared that the Defendant had acted *bonâ fide*, and under the erroneous belief that the Plaintiff was dangerous, by reason of lunacy; that he had put him into confinement in order that he might be visited and examined by medical officers until such officers should feel themselves justified in reporting whether he was a dangerous lunatic or not; that he had after such medical officers had reported him perfectly sane, kept him on their recommendation in restraint in order that he might be removed from the cantonment and placed under the observation of the civil surgeon:—*Held*, that the Defendant had acted without legal authority under Act XXXVI. of 1858 or otherwise, that he was not protected by Act XVIII. of 1850 or otherwise, and that he was liable in damages to the Plaintiff. SINCLAIR *v.* BROUGHTON - - - - ix. 152

ILLEGITIMATE BROTHER'S SUCCESSION
See HINDU LAW. 65. [xvii. 128

ILLEGITIMATE SON - - - iv. 159
See HINDU LAW. 61.

IMAM'S RIGHTS IN HIS MOSQUE - xviii. 59
See MAHOMEDAN LAW. 18.

IMMORAL CUSTOMS - - - xx. 193
See MAHOMEDAN LAW. 7.

IMMORAL DEBTS - i. 321; vi. 88; xv. 99; [xiii. 1; xvi. 1; xvii. 11
See HINDU LAW. 40, 42, 44, 47, 48 and 49.

IMPARTIBLE AND JOINT - - v. 61
See HINDU LAW. 53.

IMPARTIBLE AND SEPARATE - - v. 61
See HINDU LAW. 53.

IMPARTIBLE ESTATE - - - vii. 162
See DESHGAT WATAN.

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See HINDU LAW 51—60, 65, 77, 78.

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See OUDH LAW. 19.

IMPARTIBLE ESTATE LIABLE FOR FATHER'S DEBTS - - - - ix. 128
See HINDU LAW. 56.

IMPARTIBLE ESTATE MAY BE JOINT ii. 263
See HINDU LAW. 34.

IMPARTIBLE ESTATE NOT SEPARATE xi. 149
See HINDU LAW. 57.

IMPARTIBLE ESTATE ALIENABLE BY LAW
See HINDU LAW. 55. [viii. 248

IMPLIED CONTRACT - - - vi. 33
See RIPARIAN PROPRIETORS. 2.

IMPLIED STIPULATION - - xiv. 21
See MORTGAGE. 4.

IMPLIED TRUSTS - - - vi. 161
See OUDH LAW. 12.

IMPRISONMENT UNDER ARBITRARY RULE IS DURESS - - - iii. 61
See CONTRACT. 3.

INADEQUATE CONSIDERATION - ii. 18
See TRUSTS. 1.

INAMDAR - - - - - i. 34
See LIMITATION. 12.

INAMDARS—*Landed Tenure—Madras Regulation XXV. of* 1802, *s.* 3—*Restrictions on Alienation.*] *Madras* Regulation XXV. of 1802, sect. 3, imposes restrictions on alienations only to secure the interests of the public revenue, and under it the zemindar has no power to disturb grants otherwise valid made by his predecessor, or titles to inams acquired by prescription.—Where inamdars had received a grant in perpetuity of certain lands in 1811, and in 1863 had received a regrant thereof from the Appellant's predecessor on terms less favourable to themselves, *held*, that the Appellant had no power after the death of the last-mentioned grantor to determine their tenancies by notices to quit. MAHARAJAH MIRZA SRI ANANDA *v.* PIDAPARTI SURIANARAYANA SASTRI [xiii. 32

2. —— *Saranjams—Inams—Grants by Treaty—Resumption—Bombay Act VII. of* 1863.] *Held*, with regard to both the saranjam and inam tenures in suit, that having been originally granted by treaty to be held on a political tenure, they had continued to be so held, with the result that they were resumable at the pleasure of the Government. Such right of resumption had been recognized by legislation (see *Bombay Act* VII of 1863). It accordingly rested with the Govern

INAMDARS—*continued.*
ment to regrant the same at its discretion on the death of their holder, and it was not within the competency of any legal tribunal to review its decision. SHEKH SULTAN SANI *v.* SHEKH AJMODIN [xx. 50

INCONSISTENT CLAUSES - - xii. 1
See DEEDS. 2.

INCONSISTENT ISSUES - - xiv. 168
See LIMITATION. 39.

—— - - - - - xv. 81
See MAHOMEDAN LAW. 2.

INCUMBRANCE PENDENTE LITE xvii. 201
See MORTGAGOR. 5.

INCUMBRANCE PRIOR TO MORTGAGEE'S SUIT - - - - xvii. 201
See MORTGAGOR. 5.

INDEFINITE WORDS OF GIFT WHEN LIMITED
See HINDU LAW. 30. [xi. 218

INDIAN CONTRACT ACT, 1872 (IX. of 1872)
See COMMON CARRIER. [xviii. 121

—— s. 65 - - - - - xv. 211
See LIMITATION. 32.

INDIAN COUNCILS ACT, 1861 (24 & 25 Vict. c. 67) - - - - Supp. 119
See ACT OF STATE. 2.

INDIAN DIVORCE ACT (IV. of 1869), ss. 7, 17
See DIVORCE. [Supp. 106

INDIAN EVIDENCE ACT, 1872 (I. of 1872), s. 32 - - xxii. 183; xix. 157
See EVIDENCE. 4, 7.

—— ss. 35, 48 - - - - vii. 63
See EVIDENCE. 3.

—— ss. 65, 76 - - - - xiv. 71
See EVIDENCE. 5.

—— s. 83 - - - - xvii. 145
See EVIDENCE. 6.

—— s. 115 - - - - - x. 119
See REGISTRATION. 3.

—— - - - - - xix. 203
See ESTOPPEL. 4.

INDIAN HIGH COURTS ACT (24 & 25 Vict. c. 104), s. 9 - - - v. 178
See LEGISLATURE.

—— s. 15 - - - - - iii. 230
See EXECUTION SALES. 2.

INDIAN LIMITATION ACTS.
See ACT XIV. OF 1859.
ACT IX. OF 1871.
ACT XV. OF 1877.
And Cases collected under LIMITATION.

INDIAN REGISTRATION ACT, 1866 (XX. of 1866) - - - - i. 124
See CONTRACT. 1.

—— s. 17 - - - - - vi. 170
See REGISTRATION. 1.

—— s. 36 - - - - - ii. 211
See REGISTRATION. 2.

—— s. 52 - - - - - x. 119
See REGISTRATION. 3.

INDIAN REGISTRATION ACT, 1871 (VIII. of 1871) - - - - i. 72
See PRACTICE. 4.

—— s. 28 - - - - - xvi. 12
See REGISTRATION. 4.

—— s. 35 - - - - - iv. 166
See REGISTRATION. 5.

—— s. 73 - - - - - iii. 221
See REGISTRATION. 6.

INDIAN REGISTRATION ACT, 1877 (III. of 1877).
—— s. 17 - - - - - xvi. 53
See OUDH LAW. 25.

—— s. 17, cl. (b) and cl. (h) - - xvi. 233
See REGISTRATION. 8.

—— s. 49 - - - - xii. 150
See REGISTRATION. 9.

INDORSER - - - - xix. 24
See PROMISSORY NOTE.

INFANTS - - - - - ix. 27
See GUARDIAN. 1.

INJUNCTION - - - - xvii. 110
See TENANCY IN COMMON. 1.

INSOLVENCY — *Voluntary Transfer of Debt—11 & 12 Vict. c. 21, s. 24.*] Case in which a transfer of a debt due to an insolvent was held to have been made voluntarily within the meaning of the *Insolvent Act*, 11 & 12 Vict. c. 21, s. 24. —*Quære*, whether the burden of proof is on the transferee to shew that such transfer took place before the insolvency. MILLER *v.* SHEO PERSHAD [x. 98

2. —— *Order for Execution of Judgment against Insolvent—Limitation—Act XV. of 1877, art. 180—High Court's Ordinary Jurisdiction.*] In 1868, in pursuance of an order of the Insolvency Court of *Bombay*, a judgment was entered up in the High Court against an insolvent, and in 1886 the Insolvency Court ordered that execution should be taken out thereunder:—*Held*, that this was a judgment entered in the exercise of the High Court's ordinary original civil jurisdiction, but that as, under sect. 86 of the *Indian Insolvency Act* (11 & 12 Vict. c. 21), no present right accrued to the official assignee to move for execution until after the order of 1886 was made, his application a few days afterwards was within time under art. 180 of Act XV. of 1877.—The "ordinary jurisdiction" of the High Court embraces all such as is exercised in the ordinary course of law, and without any special occasion or special order being necessary therefor. NAVIVAHOO *v.* TURNER - - - xvi. 156

3. —— *Mortgage of all Insolvent's Assets—Contemporaneous Advance.*] Where a trading firm assigned all its assets for the time being as security for its debts, receiving a substantial simultaneous advance and a promise of future advances, *held*, that such a mortgage was valid against the firm's assignee in insolvency:—Where such trading firm subsequently to the assignment was reconstituted, new partners being introduced with the mortgagees' assent, the arrangement being that the assets of the new firm should continue as security, a new payment being made to it or for its benefit by the mort-

INSOLVENCY—*continued.*

gagees:—*Held*, that the said assignment continued to operate both as regards the new partners, and also as regards the assets for the time being of the new firm. KHOO KWAT SIEW *v.* WOOI TAIK HWAT - - - - - xix. 15

4. —— *Fraud by Defendant and Insolvent—Knowledge of Facts constituting Fraud—Onus Probandi.*] It being proved that the Defendant had, twenty years before suit, combined with an insolvent and others to conceal the property of the insolvent, with a view of defrauding his creditors, and in pursuance of the fraud had become possessed of assets belonging to the insolvent estate:—*Held*, in a suit by the official assignee to recover the same, that in order to bar the suit the *onus* was on the Defendant to shew the Plaintiff's clear and definite knowledge of the facts constituting the fraud at a date beyond the statutable period.—Such *onus* is not discharged by shewing that some hints and clues had reached the Plaintiff which might have led to such knowledge, the Defendant being all the while in possession of the insolvent's books and preventing the Plaintiff from seeing accounts which he desired to see.—A decree of the first Court directing a general account of the dealings between the Defendant and the insolvent after the date of the insolvency affirmed without the variations subsequently made. RAHIMBHOY HUBIBBHOY *v.* TURNER - - - - xx. 1

INSURANCE OF GOODS BEFORE SHIPMENT
See MARINE INSURANCE. [xvi. 61

INTEREST BY DECREE - - xvii. 260
See MORTGAGE. 4.

INTEREST, DOUBLE RATE OF - - x. 120
See PENALTY.

INTEREST IN TALUKDARI - - xv. 721
See OUDH LAW. 22.

INTEREST ON COSTS - - - iv. 137
See PRACTICE. 36.

INTEREST ON DECREE - - - v. 78
See PRACTICE. 37.

INTEREST ON MESNE PROFITS - ix. 1
See EXECUTION OF DECREE. 5.

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See LIMITATION. 34.

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See PRACTICE. 38, 39.

INTEREST, STIPULATED RATE OF xvii. 201
See MORTGAGEE. 4.

INTERESTS SIMILAR TO VESTED REMAINDERS - - - - xvii. 201
See MAHOMEDAN LAW. 6.

INTERLOCUTORY ORDER - - xi. 37
See RES JUDICATA. 7.

INVALID ADOPTION - - -
See HINDU LAW. 18, 20, 21, 23—26.

INVALID AWARD - - - xviii. 55
See ARBITRATION. 4.

INVALID BOND - - - - i. 241
See CHAMPERTY. 1.

INVALID CONTRACT TO PAY OUT OF PROCEEDS OF TALUK - - xi. 83
See OUDH LAW. 28.

INVALID TRANSFER OF SUIT BY CONSENT
See TRANSFER OF SUIT. [xiii. 134

INVOLUNTARY PAYMENT - - viii. 93
See CAUSE OF ACTION. 7.

IRREGULAR REGISTRATION - - ii. 211
See REGISTRATION. 2.

IRREGULARITY - - - - v. 171
See PRACTICE. 14.

IRREGULARITY OF PROCEDURE - xiv. 154
See LEGAL PRACTITIONERS. 2.

ISLANDS - - - - - vii. 73
See ACCRETION. 5.

ISSUE - - - Supp. 212; v. 149, 206
See RES JUDICATA. 1, 4, 3.

ISSUE AND HEIRS USED CONVERTIBLY
See DEEDS. 4. [xvi. 175

ISSUE HEARD AND DECIDED - - xii. 16
See ESTOPPEL. 3.

ISSUE OF LEGITIMACY IN EXECUTION PROCEEDINGS - - - iv. 66
See EXECUTION OF DECREE. 4.

ISSUE SUBSTANTIALLY THE SAME - xv. 66
See RES JUDICATA. 11.

ISSUES—*Evidence—Judgment.*] In a suit to set aside three ikrars as forged, and for possession with mesne profits of certain properties to which they related:—*Held*, that the two earlier ikrars having been found to be genuine, the High Court (though it held the third and confirmatory ikrar not to be proved) was wrong in declining to give effect to the two former on the ground that they were executed by an infant and under undue influence, when neither the plaint nor the issues had directly raised those points, and when no evidence had been taken relating thereto. AMEEROONNISSA KHATOON *v.* ABEDOONNISSA KHATOON [ii. 87

2. —— *Inconsistent Issues—Undue Influence—Forgery.*] Where a Plaintiff was alleging that a deed purporting to be executed by herself was a forgery, the Court ought not to admit the inconsistent issue, whether it was executed under undue influence. But where the issue of undue influence is rightly raised, the Court should consider (1) whether the transaction is a thing which a right-minded person could be expected to do; (2) whether it was improvident; (3) whether legal advice if wanting was necessary; (4) whether the transaction originated with the donor. MAHOMED BUKSH KHAN *v.* HOSSEINI BIBI [xv. 81

3. —— *Admission in Pleadings—New Point in Appeal.*] An admission in the pleadings that some notice of foreclosure had been received, coupled with an omission to raise any issue as to its validity, does not preclude a Defendant from questioning such validity in appeal. MADHO PERSHAD *v.* GUJADHAR - - - xi. 186

4. —— *Fresh Issue*—Where an issue though in terms covering the main question in the cause, does not sufficiently direct the attention of the

ISSUES—*continued.*

parties to the main question of fact necessary to be decided, and a party may have been prevented from adducing evidence, a fresh issue may be directed to try the principal question of fact. For instance, the first issue raised in the lower Court was whether a zemindary or the income thereof was answerable for the debt of the late zemindar. Their Lordships granted an issue to try whether the late zemindar had an estate of inheritance in the zemindary which descended to his minor son as his heir. OOLAGAPPA CHETTY *v.* ARBUTHNOT - - - - - i. 268

—— - - - - - xii. 166

See DECREE. 7.
INCONSISTENT ISSUES.

ISTIMRARI MOKURRARI - - xii. 205
See POTTAH. 6.

IZAFATI RIGHTS - - - vii. 55
See KHOTI.

JAGHIRES — *Land Tenure — Construction of Sunnud.*] In 1800 a sunnud was granted by the *East India Company* to *N. K.*, which contained the following provision:—"Under these circumstances it has appeared incumbent and proper, in the view of the chief authority (Hoozoor), that some suitable provision should be made as a subsidy for the expenses of *N. K.* and his descendants; that is to say, by reason of close relationship, and being descended from the same ancestors as those of the Nawabs of the maritime city of *Surat*. Therefore, this has been settled by the instrumentality of the Governor, as follows: *N. K.* with his children or descendants, after the deduction of the income of the jaghire according to the particulars given at the foot hereof, that is now in the possession of *N. K.*, shall receive from the Company's Government the sum of Rs.24,000 per annum by four equal instalments. Hereafter should it be necessary for the Government to resume the above-mentioned jaghire, given on account of maintenance or otherwise, the amount of the income thereof shall be received by the above-mentioned Khan and his children or descendants from the Treasury of the Company."—*M.*, a grandson and successor of *N. K.*, mortgaged some of the mehals comprised in the sunnud, the rents of which were thereafter collected by the mortgagee, and subsequently by the Government.

In an action brought after *M.*'s death against *F.* (his sister and successor), the Government, and certain descendants of *M.*'s sisters, for payment of the balance due upon the mortgage, it was contended that *M.* had only a life estate in the mortgaged mehals:—*Held*, that on the true construction of the sunnud, and having regard to its objects and terms, each of the descendants of *N. K.* who took the jaghire, took it for life only.

A jaghire must be taken *primâ facie* to be an estate for life. GULABDAS JUGJIVANDAS *v.* COLLECTOR OF SURAT - - - - vi. 54

2. —— *Land Tenure—Construction of Sunnud.*] Where a jagheer is granted to a man and his heirs, and there is nothing to control the ordinary meaning of the words, the grantee takes

JAGHIRES—*continued.*

an absolute interest.—Where property is under attachment in execution of a decree for instalments of debt, *held* that it is unnecessary to attach it a second time under a supplemental decree in favour of the same creditor for the balance of the same debt before issuing a warrant to sell in execution of the later decree. DOSIBAI *v.* ISHWARDAS JAGJIWANDAS - xviii. 22

JAIN LAW—*Customs—Hindu Law of Succession —Daughter's Estate.*] The ordinary Hindu law of inheritance is to be applied to Jains, in the absence of proof of special customs and usages varying that law. *Sheo Singh Rai.* v. *Mussumut Dakho and Another* (Law Rep. 5 Ind. Ap. 87) approved.—Under the law of the Mitakshara a daughter's estate inherited from the father is a limited and restricted estate only and not stridhun. Upon her death the next heirs of her father succeed thereto. CHOTAY LALL *v.* CHUNNO LALL - - - - - vi. 15

2. —— *Customs — Saraogee - Agarwalas — Adoption by Widow without Authority—Declaratory Decree—Suit to Cancel Document or Act.*] In a suit to establish a Jain widow's (under the usages and customs of the Saraogee religion) right of inheritance to her husband's estate, and to uphold her adoption of her daughter's son, as well as his right to succeed her after her death, by voiding the pretensions of the Defendant (brother of the deceased proprietor), who claimed as next of kin under Hindu law and under a nuncupative will alleged to have been made in his favour:—*Held*, that although ordinary Hindu law, in the absence of proof of special customs, has usually been applied to persons of the Jaina sect in *Bombay*, yet the Jains possess the privilege of being governed by their own peculiar laws and customs when the same are by sufficient evidence capable of being ascertained and defined and are not open to objection on grounds of public policy or otherwise:—

Held, on the evidence, that—(*a.*) A sonless widow of a Saraogee-Agarwalas takes by the custom of the sect a very much larger dominion over the estate of her husband than is conceded by Hindu law to the widows of orthodox Hindus, to the extent at least of an absolute interest in the self-acquired property of her husband.—(*b.*) A sonless widow also enjoys the right of adoption without the permission of her husband or the consent of his heirs.—(*c.*) A daughter's son may be adopted, and on adoption takes the place of a begotten son.

Although it is not an invariable rule that no questions can be raised at the hearing which are not indicated in the petition for special leave to appeal, yet where special leave had been obtained on the ground that important questions affecting a large community were involved in the decision sought to be appealed from, the Appellant was *held* to be precluded from objecting to the decree on the ground of its being declaratory only.

A right to come to the Court to have a document or act (*e.g.*, a claim under a nuncupative will) which obstructs the title or enjoyment of property cancelled or set aside, or for an injunction against such obstructions, would be

JAIN LAW—*continued.*
sufficient to sustain a declaratory decree. SHEO SINGH RAI *v.* MUSSUMUT DAKHO - - v. 87

JETTISON - - - - xvi. 240
See GENERAL AVERAGE.

JOINT ESTATE - - - -
See HINDU LAW. 32—49.

JOINT POSSESSION - - xvii. 110; xix. 48
See TENANCY IN COMMON.

JUDGE'S PRIVATE KNOWLEDGE - iii. 259
See PRACTICE. 32.

JUDGMENT - - - - - ii. 87
See ISSUES. 1.

JUDGMENT AS TO SUB-PROPRIETARY RIGHT [xv. 66; xv. 106
See RES JUDICATA. 11, 12.

JUDGMENT AS TO VALIDITY OF ADOPTION
See RES JUDICATA. 2. [ii. 283

JUDGMENT AS TO VALIDITY OF WILL
See RES JUDICATA. 1. [Supp. 212

JUDGMENT IN RENT SUIT - - xv. 97
See RES JUDICATA. 9.

JUDGMENT IN REVIEW AFTER APPEAL TO PRIVY COUNCIL - - i. 342
See REVIEW OF JUDGMENT. 2.

JUDGMENT, OBJECT OF - - iii. 154
See PRACTICE. 33.

JUDGMENT ON EVIDENCE xv. 81; xvi. 48; [xix. 4; xix. 9
See EVIDENCE, 9, 10, 11, 12.

JUDGMENT SHOULD DISPOSE OF ISSUES AS FRAMED - - - iii. 154
See PRACTICE. 33.

JURISDICTION—*Act VIII. of* 1859, *s.* 5—*Jurisdiction of Local Court—Dwelling Place.*] The Defendant being one of the proprietors of the fort and residence at *B.*, in the district of *Meerut*, where an establishment of some kind was kept, occasionally resided there for periods of time more or less considerable. The will of the testator (his father) under which he derived title, contemplated that the said fort and residence might be the principal place of residence of the testator's family, in which his family memorials should be preserved. It appeared that the Defendant also had a private house at *M.*, in the district of *Saharanpur*, in which he was actually, though temporarily, residing at the time the suit was brought:—*Held*, that the Defendant "dwelt" at *B.* within the meaning of sect. 5 of Act VIII. of 1859, and was therefore subject to the jurisdiction of the Court at *Meerut*. ORDE AND SKINNER *v.* SKINNER - - vii. 196

—— - - - - - xvii. 40
See ACCRETION. 4.

—— - - Supp. 10; Supp. 119; ii. 38
See ACTS OF STATE. 1, 2, 3.

—— - - - - - xv. 77
See OUDH LAW. 33.

—— - - - - iv. 119; viii. 77
See PENSIONS ACT OF 1871. 1, 2.

—— - - - - - ix. 174
See RENT COURTS.

JURISDICTION—*continued.*
—— - - - - - xiii. 134
See TRANSFER OF SUIT.

JUSTIFYING NECESSITY ii. 7; viii. 8; xviii. [1; xix. 196
See HINDU LAW. 106, 90, 95, 97.

—— - - - - - iv. 52
See RELIGIOUS ENDOWMENTS. 3.

KABALYAT - - - - xiii. 116
See ACCRETION. 3.

KANCHANS - - - - xx. 193
See MAHOMEDAN LAW. 7.

KHOTI—*Land Tenure—Izafati Rights.*] In a suit to recover three-fourths share of the proceeds of certain teak and izaili timber alleged to have been cut down by the Government in the village of *P.*, the Plaintiff claiming that he had acquired his share of the village as proprietor thereof, and that the same was his waitani (hereditary) khoti and izafati (village); it appeared that the Plaintiff was the grantee of an hereditary right to receive as collector of the revenue certain perquisites out of the dues, and certain cesses, and had agreed to preserve the said timber for the Government;—*Held*, that the Plaintiff had no proprietary right in the soil, either as regards his izafati rights, or by virtue of his khoti, and no right to the timber. The proprietorship of the soil is not vested in every khot. NAGARDHAS SAUBHAGYADAS *v.* CONSERVATOR OF FORESTS AND THE SUB-COLLECTOR OF KOLABA - vii. 55

KNOWLEDGE OF FACTS CONSTITUTING FRAUD - - - - xx. 1
See INSOLVENCY. 4.

LACHES - - - - xv. 229
See RATIFICATION. 1.

—— - - - - - ii. 48
See LIMITATION. 13.

LAGO OR TAX - - - xvii. 103
See CESSES.

LAND ACQUISITION ACT (X. of 1870), ss. 38, 39, 40 - viii. 90; xvii. 90; xx. 80
See LAND TAKEN COMPULSORILY. 1, 2, 3.

LAND EXCEPTED FROM CONFISCATION
See OUDH LAW. 10. [iii. 259

LAND RE-FORMED AFTER DILUVIATION
See ACCRETION. 5. [vii. 73

LAND RE-FORMED ON THE SITE OF A PERMANENTLY SETTLED ESTATE
See ACCRETION. 4. [xvii. 40

LAND TAKEN COMPULSORILY—*Act X. of* 1870, *ss.* 38, 39, 40—*Compensation.*] The provisions in Act X. of 1870, for the settling of compensation for land taken for public purposes, are intended to be final; where its amount and distribution have been settled by a competent Court, the decision not having been appealed against, the settlement is final, and cannot be questioned in a suit brought by a person whose claim has been so adjudicated upon. The proviso in sect. 40

LAND TAKEN COMPULSORILY—*continued.*

applies only to persons whose rights have not been adjudicated upon under sects. 38 and 39. RAJAH NILMONI SINGH *v.* RAM BUNDHOO ROY [viii. 90

2. —— *Act X. of* 1870—*Court of Wards—Minor.*] Where land taken under the *Land Acquisition Act*, 1870, belonged to a minor under the care of the Court of Wards:—*Held*, that the Court of Wards, being unable to give away the land of its ward, could not, by colourably accepting a merely nominal consideration, confer a valid title. Lawful possession could only be taken in strict and *bonâ fide* compliance with the provisions of the Act. MAHARAJA LUCHMESWAR SINGH *v.* CHAIRMAN OF THE DURBHANGA MUNICIPALITY - - - - xvii. 90

3. —— *Act X. of* 1870, *s.* 42—*Compensation—Assessment of Value of Land.*] In assessing the market value of land taken under the *Land Acquisition Act* (X. of 1870), *held* (1.) that twenty-five years' purchase at a rent fairly estimated ought not to be reduced in appeal to fifteen years' purchase at a rent paid for a part without reason assigned; (2.) that the Appellate Court was wrong in giving to the zemindar compensation for the loss of earnings by those employed on the land, they not being interested in the land, and the zemindar not being interested in their earnings or the loss of them. Under sect. 42, fifteen per cent. on the sum awarded must be paid if the award has omitted that addition. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* SHANMUGARAYA MUDALIAR - - xx. 80

LAND TENURE - - - xvi. 152
See ABWAB.

—— - - - - - vii. 17
See BIRT TENURES.

—— - - - - - vii. 162
See DESHGAT WATAN.

—— - - - ii. 1, 193; xx. 25
See ENHANCEMENT. 1, 2, 3.

—— - - - - - Supp. 181
See GHATWALI TENURES. 1.

—— - - - - - xi. 75
See HAWALAH TENURE.

—— - - - - - xiii. 32
See INAMDARS. 1.

—— - - - - vi. 54; xviii. 22
See JAGHIRE. 1, 2.

—— - - - - - vii. 55
See KHOTI.

—— - - - - v. 164; xviii. 27
See OCCUPANCY RIGHTS. 1, 2.

—— - - - - i. 268, 282
See POLLIEMS. 1, 2.

—— - - - - - i. 178
See PUTNEE TENURES.

—— - - - - - viii. 172
See SALT DEPARTMENT.

—— - - - xvii. 110; xix. 48
See TENANCY IN COMMON. 1, 2.

LANDLORD AND TENANT - - xii. 52
See OUDH LAW. 31.

LANDS GAINED FROM THE RIVER OR SEA, BY ALLUVION OR DERELICTION
See ACCRETION. 4. [xvii. 40

LAPSE OF TIME - - - - i. 1
See HINDU LAW. 66.

LEASE—*Lessor and Lessee.*] A valid lease cannot be granted by a person not in possession of the lands leased. TIERY *v.* KRISTODHUN BOSE [i. 76

2. —— *Renewal of Lease — Guardian — Minor.*] In a suit to recover arrears of rent, it appeared that the Defendant was heir to a deceased lessee of the Plaintiffs, and that during his minority his guardians, the mother and widow of the lessee, renewed the lease, and subsequently surrendered it to the Plaintiffs:—*Held*, that the Plaintiffs, having failed to shew that the Defendant was either bound by such renewal or had subsequently ratified it, could not convert their suit into one against the estate of the deceased and the Defendant as representing it; and, further, that the renewal was in fact made by the mother and widow for themselves and in their own interest, and did not establish any relation between the Plaintiffs and the estate. INDUR CHUNDER SINGH *v.* RADHAKISHORE GHOSE - - - - - xix. 90

—— - - - - -
See POTTAHS.

—— - - - - - xiii. 44
See LUNATIC.

—— - - - - - v. 164
See OCCUPANCY RIGHTS. 1.

LEGAL DISABILITY TO SUE - - iii. 7
See LIMITATION. 15.

LEGAL PRACTITIONERS—*Admission to Practise in the Privy Council—Orders of March* 31, 1870, *ss.* 2 *and* 3.] Under sects. 2 and 3 of the Rules of 31st of March, 1870, only solicitors or others practising in *London*, or solicitors admitted by the High Courts in *India* or the corresponding Courts in the Colonies, can be admitted to practise in the Privy Council. The Judicial Committee have no power to extend at their discretion the class of those eligible. *In re* TWIDALE'S PETITION [xvi. 163

2. —— *Act XVIII. of* 1879, *ss.* 14, 40—*Pleader—Irregularity of Procedure.*] Proceedings having been taken before the Commissioner of *Coorg* against a pleader under the *Legal Practitioners Act* XVIII. of 1879, s. 14, for professional misconduct, a report was made to the Judicial Commissioner that he should be removed from the roll, and the Judicial Commissioner made an order to that effect without hearing the pleader:—A later order was made that the pleader might adduce evidence before the Commissioner. He did so, and the evidence was remitted to the Judicial Commissioner, who confirmed his previous order, again without hearing the pleader:—*Held*, that there had been irregularity under sect. 40 of the Act, that the order must be set aside, and the pleader restored to the roll. *In re* SOUTHEKUL KRISHNA ROW - - xiv. 154

3. —— *Act XVIII. of* 1879, *s.* 13—*Pleader.*] Where a certificated pleader has been suspended by the Court for twelve months for "reasonable

LEGAL PRACTITIONERS—*continued.*

cause" within the meaning of sect. 13 of Act XVIII. of 1879:—*Held*, that such decision will not be interfered with unless it is clearly shewn that the *quantum* of punishment was unreasonable and excessive. *In re* QUARRY - xvii. 199

4. —— *Vakeel—Suspension from Practice—Special Leave to Appeal.*] Where a vakeel was ordered by the High Court to be suspended from practice for three months, and after the expiration of that period applied for special leave to appeal to Her Majesty in Council:—*Held*, that no case of miscarriage of justice having been made out, such application must be refused. *In re* QUARRY - - - - vii. 6

LEGISLATURE—*Powers of the Indian Legislature—Act XXII. of* 1869—*High Court's Jurisdiction excluded—24 & 25 Vict. c.* 104, *s.* 9—*Conditional Legislation.*] Act No. XXII. of 1869 of the Indian Legislature, which excludes the jurisdiction of the High Court within certain specified districts, is not inconsistent with the *Indian High Courts Act* (24 & 25 Vict. c. 104), or with the charter of the High Court, and is in its general scope within the legislative power of the Governor-General in Council.—The 9th section of that Act, which confers upon the Lieutenant-Governor of *Bengal* the power to determine whether the Act, or any part of it, shall be applied in a certain district, is conditional legislation, and not a delegation of legislative power.—Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or in a provincial legislature, they may be well exercised either absolutely or conditionally; in the latter case leaving to the discretion of some external authority the time and manner of carrying its legislation into effect, as also the area over which it is to extend. QUEEN *v.* BURAH - - v. 178

LEGITIMACY.

See MAHOMEDAN LAW. 13–15.

—— - - - - - - i. 282

See HINDU LAW. 64.

LESSOR AND LESSEE - - - xix. 90

See LEASE.

LEX LOCI CONTRACTÛS - - ix. 58

See PRINCIPAL AND SURETY.

LIEN ARISING FROM EXECUTION PROCEEDINGS - - - - vi. 88

See HINDU LAW. 42.

LIEN OF BANIAN - - - xviii. 78

See PRINCIPAL AND BANIAN.

LIEN ON GOODS SALVED - - xvi. 240

See GENERAL AVERAGE.

LIFE ESTATE - - - - x. 51

See HINDU LAW. 111.

LIMITATION, LAW OF—*Act XIV. of* 1859—*Construction—Immoveable Estate.*] The period of limitation within which a claim is barred, must be fixed and uniform; and accordingly the term "immoveable property" must be construed as used in the Act, and not as used by the personal law to which the parties may be subject. It comprehends all that would be real property in English law and possibly more. MAHARANA FATTEHSANGJI JASWATSANGJI *v.* DESSAI KALLIANRAIJI HEKOOMUTRAIJI - - - i. 34

2. —— *Bengal Act VIII. of* 1869, *s.* 29—*Suspension of Limitation.*] The limitation prescribed by *Bengal Act* VIII. of 1869, s. 29, is not prevented from running in favour of a tenant during the period that a suit in ejectment is pending against him.—*Ranee Surnomoyee* v. *Shooshee Mukhee Burmonia* (12 Moore's Ind. Ap. Ca. 244) considered. HURRO PERSHAD ROY CHOWDHRY *v.* GOPAL CHUNDER DUTT - - - - ix. 82

3. —— *Charge on Immoveable Estate—Res Judicata—Code of Civil Procedure, s.* 13.] Unless the amount recoverable under a bond is made a charge upon immoveable estate, a suit in respect of it is barred in six years.—Where the personal liability of the Defendant might and ought to have been claimed against him in a former suit brought by the same Plaintiff on the bond to enforce such alleged charge:—*Held*, that a new suit for that purpose is barred as *res judicata* under sect. 13 of the Code of Civil Procedure. KAMESWAR PERSHAD *v.* RAJKUMARI RUTTUN KOER [xix. 234

4. —— *Boundary Cases—Onus Probandi—Presumption of Possession within Statutable Period.*] In boundary cases the Appellant must come prepared to shew clearly where the decree appealed from is wrong, and what other course is right; it is insufficient to raise doubts as to the correctness of the decision.—Where the Plaintiff suing in 1881 showed title and possession in 1857 of the lands in suit, *held*, that possession must be presumed in the absence of evidence to the contrary to have continued to within twelve years of suit, and to shew the boundary line between the lands in suit and the Defendant's estate. It is unnecessary to prove acts of possession by the Plaintiff or actual dispossession by the Defendants within the statutable period. RAJCOOMAR ROY *v.* GOBIND CHUNDER ROY [xix. 140

5. —— *Acknowledgment—Novation of Debt.*] Where in order to elide the *Limitation Act* the Defendant gave a written acknowledgment of an existing debt, and engaged to settle accounts and pay within a specified time the amount which might be due, *held*, that this did not operate a complete novation of the debt giving to the creditor a right *ex lege* (in the absence of special stipulation to the contrary) to interest from the due date at a rate greater than that which the debt had previously borne. TANJORE RAMACHENDRA ROW *v.* VELLAYANADAN PONNUSAMI [xviii. 37

RULINGS UNDER ACT XIV. OF 1859.

6. —— *Sale for arrears of Revenue—Mocassa Villages—Acknowledgment.*] The talook of a zemindar was sold in 1854 for arrears of revenue, and possession was given to the purchaser in 1855: it was subsequently represented by him to the Government that fifty of the villages had been sold wrongfully, inasmuch as they were mocassa villages, which had been alienated from

LIMITATION, LAW OF—*continued.*

the zemindary and paid a quit-rent only to the zemindar. In 1860 the Government ordered an annual payment to be made to the ex-zemindar by way of compensation; but he did not accept it, and he sued in 1868 for the recovery of the villages:—*Held*, that more than twelve years having elapsed since the sale and the dispossession, the Act XIV. of 1859 was a bar to the suit, notwithstanding the transactions between the Government and the ex-zemindar. RAJAH SRI CHAITANYA CHUNDRA *v.* COLLECTOR OF GANJAM [i. 335

7. —— *Act XIV. of* 1859, *s.* 1, *cl.* 12—*Mortgage Bond—Hypothecation of Land.*] In a duly registered mortgage bond dated the 21st of June, 1856, the obligor covenanted to repay principal moneys and interest in Jeyt 1274 F. S., and mortgaged certain specified lands as security. The lands so pledged were subsequently sold to the Appellant in execution of a decree obtained upon another bond made by the obligor, subsequent and subject to the former. In a suit brought on the 30th of August, 1871, against the obligor and the Appellant to recover the amount due on the first bond from the former personally, and also by sale of the mortgaged lands, it was contended that the suit was barred under cl. 16, sect. 1 of Act XIV. of 1859:—*Held*, that the suit, being for the recovery of immoveable property, or of an interest in immoveable property, and founded not upon the contract to pay the money but upon the hypothecation of the land, fell within cl. 12, sect. 1 of the said Act, and was not barred. JUNESWAR DASS (FOR SELF AND AS GUARDIAN OF CHUNDER COOMAR) *v.* MAHABEER SINGH, RAM ADHEEN SING AND OTHERS - - - - - - iii. 1

8. —— *Act XIV. of* 1859, *s.* 1, *cl.* 12—*Partition by Compromise—Suit for Share of Land.*] Immoveable property partly situated in *Rohilcund* and partly in *Oudh*, which had formerly belonged to the common ancestor of the Appellant and the Respondent, was claimed by each on the ground of heirship. By a deed of compromise they agreed to divide it in certain proportions, and the agreement was carried out in *Rohilcund*, but not in *Oudh*, where the Respondent was, and continued, in possession. At the end of nine years from the date of the deed of compromise the Appellant sued for possession of her share of the property in *Oudh*.—The Judicial Commissioner of *Oudh* having decided that the suit was founded on the contract contained in the deed of compromise or for a breach of it, and, therefore, barred by the *Indian Limitation Act*, XIV. of 1859, s. 1, clause 10; it was *held* (reversing this decision), that the claim did not rest on contract only, but on a title to the land acknowledged and defined by the contract, which was part only of the evidence of the Appellant to prove her case, and not all her case; and that, consequently, the suit was not founded on contract or for a breach of it, but was a suit for the recovery of immoveable property "to which no other provision of the Act applies," and, therefore, subject only to the limitation of twelve years prescribed by s. 1, clause 12. RANI MEWA KUWAR *v.* RANI HULAS KUWAR - - i. 157

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LIMITATION, LAW OF—*continued.*

9. —— *Act XIV. of* 1859, *s.* 1, *cl.* 13—*Maintenance under a Will—Continuing Cause of Action.*] A suit for maintenance and arrears under a will is not barred after the expiration of twelve years from the testator's death under Act XIV. of 1859, s. 1, sub-s. 13, unless the will which confers the right thereto also creates in favour of the Plaintiff a charge on the inheritance of the testator's estate.—By common law the right to maintenance is one accruing from time to time according to the wants and exigencies of the person entitled. NARAYANRAO RAMCHANDRA PANT *v.* RAMABAI [vi. 114

10. —— *Act XIV. of* 1859, *s* 1, *cl.* 13—*Suit for Share of Joint Estate—Partition.*] A suit to recover a share of joint family property not brought within twelve years from the date of the last participation in the profits of it is barred by sect. 1, cl. 13, of Act XIV. of 1859; and once barred, the right to sue would not be affected by the later Acts of limitation. APPASAMI ODAYAR *v.* SUBRAMANYA ODAYAR - - xv. 167

11. —— *Act XIV. of* 1859, *s.* 1, *cl.* 13—*Possession by Hindu Manager of Joint Family—Suit for Partition.*] Possession by the manager of a Hindu joint family, is not in the absence of special circumstances adverse so as to bar under Act XIV. of 1859, s. 1, cl. 13, a suit by the others for partition. RUNJEET SINGH *v.* KOOER GUJRAJ SINGH [i. 9

12. ——*Act XIV. of* 1859, *s.* 1, *cl.* 16—*Toda Giras—Inamdar—Rent Charge.*] An hereditary right to toda giras payable by an inamdar out of the rents of a village is an interest in immoveable property within the meaning of the *Limitation Act* XIV. of 1859, and a claim for arrears of it for upwards of six years is not barred by clause 16, s. 1 of that Act. MAHARANA FATTEHSANGJI JASWATSANGJI *v.* DESSAI KALLIANRAIJI HEKOOMUTRAIJI - - - - - - i. 34

13. —— *Act XIV. of* 1859, *s.* 5—*Purchaser from Satisfied Mortgagee without notice of Mortgagor's Title—Laches—Mesne Profits.*] The heirs and representatives of a mortgagor sued in 1869 to recover possession with mesne profits of property comprised in a zur-i-peshgee lease executed in 1814, the mortgage debt due in respect thereof having been satisfied, from the Appellants, who had purchased the same for valuable consideration without notice of the Plaintiffs' title. It appeared that as to a moiety of the property the Appellants' vendor, a Mahomedan lady, derived her title under a baimokasa executed in 1844 by her husband, who was one of the heirs of the mortgagee.—The Appellants in the Courts below mainly relied upon an alleged conveyance of the equity of redemption to the heirs of the mortgagee in 1841, and did not plead or prove that the execution of the baimokasa was a *bonâ fide* transaction:—*Held*, that the conveyance of 1841 not having been proved, the laches of the Plaintiffs did not stop them from ascertaining their rights at any time within the statutable period of sixty years.—In the absence of any investigation by the Courts below into the *bonâ fides* of the baimokasa, the Appellants not having pleaded limitation under s. 5, Act XIV. of 1859—*Held*

that no distinction as regards the statutable period of limitation could be drawn by their Lordships in respect of the property included therein.—*Radhanath Doss* v. *Gisborne & Co.* approved (14 Moore's Ind. Ap. Ca. 1).—Under the circumstances of laches and irregularity mesne profits were allowed only from the date of the institution of the suit. JUGGERNATH SAHOO *v.* SYUD SHAH MAHOMMED HOSSEIN - ii. 48

14. —— *Act XIV. of* 1859, *s.* 8—*Account Current—Principal and Agent*] An agreement between a principal and his agent commenced with an admitted balance, and clearly contemplated the existence of an account current containing mutual items of debit and credit. The agreement contained a stipulation that on the adjustment of the accounts, the principal should be bound to pay such balance as might be found due from him. The account was kept accordingly as a continuous account, and contained several items which brought down the mutual dealings to March, 1868. The agent sued in February, 1871, to recover the balance due to him on the account:—*Held*, that the case fell within the 8th section of Act XIV. of 1859, and was not barred by limitation, even as to the items which were dated more than three years before the institution of the suit. WATSON *v.* AGA MEHEDEE SHIRAZEE [i. 346

15. —— *Act XIV. of* 1859, *ss.* 11, 12—*Act VIII. of* 1859, *s.* 246—*Legal Disability to Sue.*] *Held*, that ss. 11 & 12 of Act XIV. of 1859 apply to s. 246 of Act VIII. of 1859, and that the Appellant was under disability within the meaning of those sections, and that the suit having been brought after the expiration of a year, but during disability, was in time. MUSSUMAT PHOOLBAS KOONWUR *v.* LALLA JOGESHUR SAHOY. iii. 7

16. —— *Act XIV. of* 1859, *s.* 20—*Proceedings to enforce a Decree in a Court without Jurisdiction.*] A proceeding to enforce a decree, taken *bonâ fide* and with due diligence before a Judge whom the party, *bonâ fide* though erroneously, believes to have jurisdiction, is a proceeding within the meaning of s. 20, Act XIV. of 1859; whether the Judge actually decides that he has jurisdiction, or supposing himself to have jurisdiction acts accordingly. *Roy Dhunput Sing* v. *Madhomottee Dabia* (1 Beng. L. R. 23) commented upon. HIRA LALL *v.* BUDRI DASS - vii. 167

17. —— *Act XIV. of* 1859, *ss.* 20, 21—*Proceeding to enforce Decree obtained before Limitation Act applied.*] A decree for money against the Respondent having been obtained by the Appellant on the 5th of October, 1866, the former made payments on account up to October, 1869: on the 22nd of which month the Appellant made a *bonâ fide* application to execute the same in respect of the unpaid balance. An order to that effect was refused by the Court which made the decree, but the Respondent nevertheless made further payments on account.—On the 4th of May, 1871, a fresh application for execution was made, which was eventually again refused, the Chief Court of the *Punjab* holding that the decree having been obtained before the introduction of Act XIV. of 1859 into the *Punjab* the case must be governed

by the provisions of sect. 21 and not by sect. 20 of that Act:—*Held*, that this order must be reversed. The application of the 22nd of October, 1869, was a proceeding to enforce the decree within the meaning of sect. 20, and having been taken within three years next preceding the application of the 4th of May, 1871, this last application was not barred by sect. 21.—The prohibition laid down in sect. 20 does not on the true construction of sect. 21 apply to judgments in force at the time of passing the Act.—An order refusing an application to execute a decree is not an adjudication within the rule of *res judicata* or within sect. 2 of Act VIII. of 1859. DELHI AND LONDON BANK *v.* MELMOTH A. P. ORCHARD [iv. 127

RULINGS UNDER ACT IX. OF 1871.

18. —— *Act IX. of* 1871—*Suit for Possession of Immoveable Estate—Possession by Plaintiff within Statutable Period—Adverse Possession by Defendant.*] Although under the old law of limitation a Plaintiff must prove that he was in possession of the property in suit within twelve years before suit, yet under Act IX. of 1871 he may sue within twelve years from the time when the possession of the Defendant, or of some person through whom he claims, became adverse to him.—A Collector in possession of land for the purpose of protecting the Government revenue, is bound to pay the surplus proceeds of the estate to the real owner, and his possession does not become adverse to the real owner by reason of paying such proceeds to an adverse claimant. RAO KARAN SINGH *v.* RAJA BAKAR ALI KHAN [ix 99

19. —— *Act IX. of* 1871—*Act XIV. of* 1859, *s.* 20—*Execution of Barred Decree, valid Order for —Execution Sale stayed on Condition.*] As regards suits instituted before the 1st of April, 1873, all applications in them are excluded from the operation of Act IX. of 1871.—An application for execution of a decree is an application in the suit on which the decree was obtained.—Such application is not barred by sect. 20 of Act XIV of 1859, if made within three years from the date of a proceeding within the meaning of that section.—Assuming that a decree is barred at the date of some order made for its execution:—*Held*, that such order, though erroneously made, is nevertheless valid, unless reversed upon appeal. —Where a sale of attached property is stayed on the application of the judgment debtor on condition that the attachment should remain in force, *held*, that the subsequent striking off of the case from the Judge's file does not affect the rights of the decreeholders. MUNGAL PERSHAD DICHIT *v.* GRIJA KANT LAHIRI CHOWDHRY [viii. 123

20. —— *Act IX. of* 1871, *s.* 10—*Arts.* 118, 123, 145—*Suit to obtain Control of Trust Property.*] Sect. 10 of Act IX. of 1871 applies to cases where the property in suit is being used for some purpose other than that of the trusts to which it is applicable, not to cases where the Defendant admits he is trustee, and the Plaintiff without proving misapplication brings a suit more than twelve years after the cause of action arose, to

obtain or control the management. Such a suit if it does not fall within sect. 123 or sect. 145 of the same Act (by either of which a twelve years' period is provided) is barred in six years under sect. 118. BALWANT RAO BISHWANT CHANDRA CHOR *v.* PURUN MAL CHAUBE - - - x. 90

21. —— *Act IX of* 1871, *s.* 20—*Acknowledgment of Debt—Authority of Agent.*] *Held*, upon the evidence in this case, that an acknowledgment of the debt sued for had not been signed by an agent of the Defendant generally, or specially authorized in that behalf within the meaning of Act IX. of 1871, sect. 20. Whatever general authority such agent may once have had from the Defendant it had ceased within the knowledge of the Plaintiff at the time of the signature. Special authority in that behalf cannot be proved by secondary evidence of the contents of a letter the non-production of which is not satisfactorily accounted for. It is a cardinal rule of evidence, not one of technicality but of substance, which it is dangerous to depart from, that where written documents exist they shall be produced as being the best evidence of their own contents. DINOMOYI DEBI *v.* ROY LUCHMIPUT SINGH - - - - - - vii. 8

22. —— *Act IX. of* 1871, *s.* 27—*Art.* 34—*Watercourse—Rights of Water—Continuing Cause of Action—Easements.*] In a suit to establish the Plaintiff's right to a pyne or artificial watercourse, and also to a tal or reservoir, and the water flowing from them through the Defendants' estate to his own, and to obtain the removal of certain obstructions, it appeared that the pyne was constructed by the Plaintiff's ancestors at a distant period of time, with compensation to the Defendants, and that the Plaintiff and his ancestors had had peaceable and continuous use for more than twenty years of the water flowing through it and to the overflow water of the tal, after the Defendants had used the water for the purpose of irrigating their said estate, and that all the said obstructions were unauthorized; but it was contended that the Plaintiff's right to recover in respect of them was barred by the *Statute of Limitations*:—*Held*, that a grant or some other legal origin of the Plaintiff's right must be presumed, and that Act IX. of 1871, being a remedial statute, did not exclude or interfere with titles and modes of acquiring easements existing independently of the Act; and in particular with those existing independently of sect. 27 of that Act, under which a statutory title could not accrue to the Plaintiff unless a period of twenty years' enjoyment terminating within two years of suit were shewn:—*Held*, further, that assuming the obstructions to have existed more than two years from the date of suit they were continuing nuisances as to which the cause of action accrued *de die in diem*, and was not barred by Act IX. of 1871, 2nd Schedule, Part V. Art. 31. MAHARANI RAJROOP KOER *v.* SYED ABDUL HOSSEIN vii. 240

23. —— *Act IX. of* 1871, *Arts.* 65, 139—*Rights of Mortgagee.*] Where a mortgagee sued in covenant and also to enforce his mortgage security, *held*, that under Act IX. of 1871, Sched. ii., Art. 65, the personal remedy was barred in three years, but that art. 132 of the same schedule

provided a limitation of twelve years as against the mortgaged property. RAMDIN *v.* KALKA PERSHAD - - - - - xii. 12

24. —— *Act IX. of* 1873, *Art.* 93—*Suit to set aside Forged Deed—Mesne Profits.*] In a suit brought in 1875 to set aside a deed as a forgery, it appeared that the same was executed on the 17th of July, and registered on the 19th of July, 1864, and that an attempt to enforce the deed had been made in 1865:—*Held*, that the suit fell within the description of clause 93 of the 2nd schedule of Act IX. of 1871, and was barred by limitation, where the period (three years) ran from the date of registration or the date of the attempt.—Where a decree is for "possession with wasilat," the reasonable construction thereof is that wasilat is given thereby up to the date of delivery of possession, and not merely up to the date of suit, notwithstanding that in the schedule to the plaint wasilat is estimated according to the amount thereof then due. FAKHARUDDIN MAHOMED AHSAN CHOWDHRY *v.* OFFICIAL TRUSTEE OF BENGAL - - - - - viii. 197

25. —— *Act IX. of* 1871, *Art.* 129—*Suit to set aside Adoption—Suit to recover Possession of Land.*] The provision in the schedule to the *Statute of Limitations*, 1871, wherein it is enacted that with respect to a suit to establish or set aside an adoption, the time when the period of limitation begins to run is "the date of the adoption or (at the option of the Plaintiff) the date of the death of the adoptive father," does not interfere with the right which, but for it, a Plaintiff has of bringing a suit to recover possession of real property within twelve years from the time when the right accrued. RAJ BAHADOOR SINGH *v.* ACHUMBIT LAL - - - - vi. 110

26. —— *Act IX. of* 1871, *Art.* 129—*Suit to set aside Adoption—Suit for Possession involving Invalidity of Adoption.*] A suit "to set aside an adoption" denotes any suit which brings the validity of an adoption under question, and therefore includes a suit for possession dependent on that issue as well as a suit to declare its invalidity:—*Held*, therefore, that Art. 129 of Act IX of 1871 relates to all suits in which the plaintiff cannot succeed without displacing an apparent adoption by virtue of which the defendant is in possession.—Where the Defendants had been in fact adopted by Hindu widows purporting to act in pursuance of their husband's authority, and such adoptions had been followed by continuous possession, and had been recognized in formal instruments, proceedings, and decrees to which the Plaintiffs were parties:—*Held*, that suits by reversionary heirs of the husband brought more than twelve years after the adoptions, but less than that period after their title had accrued at the death of the surviving widow, were barred by art. 129 of Act IX. of 1871.—*Raj Bahadoor Singh* v. *Achumbit Lal* (Law Rep. 6 Ind. Ap. 110) explained. JAGADAMBA CHOWDHRANI *v.* DAKHINA MOHUN - - - - - xiii. 84

27. —— *Act IX. of* 1871, *Art.* 144—*Adverse Possession — Purchaser from Hindu Widow — Condition against Alienation.*] A Hindu widow having effected an agreement with her co-sharer, the ancestor of the Respondents, that the pro-

perty to which they were jointly entitled should remain in equal shares in their joint possession and enjoyment, but that she should have no power to alienate the same, and that after her death the same should pass to her co-sharer, sold her share therein in 1845, with possession to the ancestor of the Appellant, and died in October, 1862.—In a suit by the Respondents in August, 1874, to recover the share so sold:—*Held*, that there was no adverse possession to the Respondents till the death of the widow in October, 1862, and therefore the suit was not barred by limitation.—The alienation of the widow's estate was good for her lifetime; there was no condition against alienation thereof, and if there had been, there were no words of forfeiture and no rule of law attaching forfeiture to its breach, consequently Act X. of 1871, 2nd Schedule, head 144, did not apply. MUSSUMMAT BEBEA SAHODRA *v.* ROY JUNG BAHADOOR - - - viii. 210

28. —— *Act IX. of* 1871, *Art.* 145—*Adverse Possession.*] According to the provisions of art. 145 of Act IX. of 1871, schedule 2, the time from which the period of twelve years is to be calculated, is that when the possession of the Defendant or some person through whom he claims becomes adverse to the Plaintiff. Case in which, although the lands in suit were technically in the possession of the Defendant's predecessor, the period of limitation was *held* not to run until the Plaintiff was under some necessity or duty to assert his rights. DEWAN MANWAR ALI *v.* UNNODA PERSHAD ROY - - vii. 1

RULINGS UNDER ACT XV. OF 1877.

29. —— *Act XV. of* 1877, *s.* 10—*Suit against Government holding under Forfeiture.*] *Held*, that Act XV. of 1877, sect. 10, does not apply to the Government in possession of an estate in their own right under a claim of forfeiture arising from the conviction of the last holder, and not as trustee for a specific purpose. ZEMINDAR OF PALCONDAH *v.* SECRETARY OF STATE FOR INDIA - - - - - xii. 120

30. —— *Act XV. of* 1877, *Art.* 11—*Act X. of* 1877, *ss.* 280, 283—*Suit to set aside Release from Attachment.*] *Held*, that a suit under sect. 283 of Act X. of 1877, to set aside an order under sect. 280, releasing from attachment and sale property which had been seized at the instance of the Plaintiff in execution of his decree, is barred by art. 11 of Act XV. of 1877, unless brought within a year of the date of the order. SARDHARI LAL *v.* AMBIKA PERSHAD - xv. 123

31. —— *Act XV. of* 1877, *Art.* 91—*Suit to set aside Deed—Undue Influence.*] In a suit brought in 1884 by the Appellant and her husband to have a deed executed in 1872 by the husband set aside on the ground of mental incompetence, an unconscionable bargain, and undue influence:—*Held*, that as all the facts relied upon were known to the husband from the date of the deed, and he was not shown to be a man (however weak in intellect) incapable of having that knowledge, and of allowing it to operate upon his mind, the suit was barred by Act XV. of 1877, art 91. RANI JANKI KUNWAR *v.* RAJA AJIT SINGH [xiv. 148

32. —— *Act XV. of* 1877, *Art.* 97—*Indian Contract Act, s.* 65—*Cause of Action—Failure of Consideration.*] The Respondent being indebted to the Appellant agreed to convey certain property to him, setting off the debt against part of the price. No money was paid, and disputes arising as to other terms of the agreement, the Respondent unsuccessfully sued to enforce it; being afterwards sued for his debt he pleaded limitation:—*Held*, that the decree dismissing the Respondent's suit was the starting point of limitation. That imposed, under sect. 65 of the *Indian Contract Act*, a fresh obligation on the Respondent to pay his debt; in the alternative it imported, within the meaning of art. 97 of Act XV. of 1877, a failure of the consideration which entitled him to retain it. MUSSAMAT BASSO KUAR *v.* LALA DHUM SINGH - - - xv. 211

33. —— *Act XV. of* 1877, *Art.* 97—*Act XIV. of* 1882, *s.* 43—*Failure of Consideration—Res Judicata.*] In a suit in 1885 to recover back purchase-money and interest, it appeared that the Plaintiff was a purchaser in 1879 from the father of a Mithila joint family, whose co-sharers, on the 22nd of December, 1880, successfully resisted registration of the Plaintiff's name by the Collector, and afterwards defeated his suit for possession:—*Held*, that, even if the consideration did not fail originally, its subsequent failure was complete when the Plaintiff was first prevented from taking possession. Consequently, under article 97, sched II., of Act XV. of 1877, the suit was barred.—*Quære*, whether it was also barred under sect. 43, Civil Code Procedure, 1882, the relief prayed for not having been included in the suit for possession as an alternative claim HANUMAN KAMUT *v.* HANUMAN MANDAR [xviii. 158

34. —— *Act XV. of* 1877, *Art.* 109—*Mesne Profits—Interest on Mesne Profits—Act XXIV. of* 1870.] Under *Limitation Act* XV. of 1877 sched. II., art. 109, mesne profits can only be recovered for the three years next before the filing of the plaint.—*Held*, that the Defendant, who had only come into possession of the estate in suit on its being released from the charge of a superintendent appointed under Act XXIV. of 1870, could not be charged with sums which might have been received by the superintendent but for his wilful default.—There being no rule of law obliging the Court to allow interest upon mesne profits, the discretion of the lower Courts in refusing interest was not interfered with. KISHNA NAND *v.* KUNWAR PARTAB NARAIN SINGH - xi. 88

35. —— *Act XV. of* 1877, *Arts.* 49, 120, 123—*Act XIV. of* 1882, *s.* 43—*Suit by Mahomedan Widow to recover Moveable Estate of Deceased—Dower—Res Judicata.*] A suit by a Mahomedan widow for dower is distinct from her suit to recover the whole or a portion of her husband's estate as heiress, and a final decree disposing of the former does not bar the latter under sect. 43 of Act XIV. of 1882.—Art. 120 of the *Limitation Act* applies to a suit to recover as heiress the moveable estate of the deceased. Such a suit is not for a distributive share of property as in art. 123, or for specific moveable property wrongfully taken as in art. 49, and is not within any other article

of the schedule to that Act. MAHOMED RIASAT ALI *v.* MUSSUMAT HASIN BANU - xx. 155

36. —— *Act XV. of* 1877, *Art* 127 —*Suit for Share of Joint Estate.*] *Held*, that the Plaintiff having been excluded to his knowledge from his share of alleged joint property for more than twelve years, his suit was barred by the *Limitation Act* of 1877, c. 127, Schedule II RAI RAGUNATH BALI *v.* RAI MAHARAJ BALI xii. 112

37. —— *Act XV. of* 1877, *Art.* 132—*Charge on Immoveable Estate.*] Where a will recited that the father of the Appellant had lent the testator Rs 15,000, and devised certain specific immoveable property to the Appellant with directions to repay the debt therefrom with interest:—*Held*, that this was a charge thereon, and that a suit by the auction purchaser of the creditor's claim to recover the money was governed by art. 132 of Act XV. of 1877, and having been brought within twelve years was not barred. GIRISHCHUNDER MAITI *v.* RANI ANUNDMOYI DEBI - xiv. 137

38. —— *Act XV. of* 1877, *Art.* 135—*Suit against Purchasers from Mortgagor — Cause of Action—Adverse Possession by Mortgagor.*] In a suit in 1882 by a purchaser from a mortgagee after foreclosure for possession against some purchasers from the mortgagor, it appeared that under the terms of the mortgage deed the mortgagor's right to possession determined on the 17th of February, 1866; that on the 31st of March, 1873, the title of the mortgagee as against the mortgagor became absolute by foreclosure under Regulation XVII. of 1806; that the mortgagor's purchasers had not been made parties to the foreclosure proceedings, and therefore continued entitled to redeem: that in 1879 the Plaintiff acquired the mortgagee's interest:—*Held*, that the suit was barred by limitation under art. 135 of Act XV. of 1877, not having been brought within twelve years from the 17th of February, 1866. The mortgagee's right to possession having been extinct in 1878 was not revived by the *Transfer Act* of 1882. SRINATH DAS *v.* KHETTERMOHUN SINGH - - xvi. 85

39. —— *Act XV. of* 1877, *Art.* 140, *and s.* 19—*Suit by Devisee under a Will—Adverse Possession —Acknowledgment.*] Where a Hindu Plaintiff sues as devisee under a will, his suit is barred by art. 140 of Act XV. of 1877 unless brought within twelve years from the date of the testator's death. —If the case made by the plaint is expressly or impliedly an absolute title under a will, the Plaintiff cannot inconsistently therewith set up a title paramount to that which the Defendant had derived from the testator in his lifetime and by adverse possession.—*Eschenchunder Singh* v. *Shamachurn Bhutto* (11 Moore's Ind. Ap. Ca. 7) followed.—An admission contemplated by sect. 19 is an admission to the Plaintiff or some one claiming under him. MYLAPORE *v.* YEO KAY [xiv. 168

40. —— *Act XV. of* 1877, *Arts.* 141, 142—*Res Judicata—Decree against Hindu Daughter representing the Estate—Suit by Reversioner.*] To a suit by one of three reversionary heirs against another to recover possession of two shares of the estate, the Defendant pleaded that he had been

sued in respect of the whole estate by the daughter of the last full proprietor (while she represented that estate), and that, a final judgment having been given in his favour, the Plaintiff was bound thereby in respect of his title to both shares claimed:—*Held*, that this plea was correct, and that the Plaintiff was not entitled to the shares in suit within the meaning of art. 141 of the 2nd schedule of the *Limitation Act* of 1877, or art. 142 of the Act of 1871, so as to possess a cause of action in respect thereof on the daughter's death—The rule in the *Shivagunga Case* (9 Moore's Ind. Ap. Ca. 539), to the effect that an adverse decree against a Hindu widow binds those claiming in succession, applies equally to the case of the daughter. HURRINATH CHATTERJI *v.* MOHUNT MOTHOOR MOHUN GOSWAMI [xx. 183

41. —— *Act XV. of* 1877, *Art.* 142—*Possession by Plaintiff within Statutable Period- Onus Probandi.*] It is not the law that where Plaintiffs are shewn to be the rightful owners of the land in suit, it is for the ryot Defendants to shew that they are entitled to retain possession:—*Held*, on the evidence in this case, that the *onus* was on the Plaintiffs to prove their possession at some time within twelve years prior to suit under art. 142 of Act XV. of 1877. MOHIMA CHUNDAR MOZOOMDAR *v.* MOHESH CHUNDAR NEOGI xvi. 23

42. —— *Act XV. of* 1877, *Art.* 144—*Adverse Possession—Hindu Joint Estate.*] Where the husband of a female member of a Hindu joint family had been, on the purchase of an estate, admitted by the male members as a co-proprietor in respect of a one-fourth share thereof:—*Held*, that possession of the whole estate by the joint family or its manager was adverse to such co-proprietor in respect of his fourth share unless shewn to have been authorized by him, and consequently that the Plaintiff, who claimed title from him, was barred by *Limitation Act* XV. of 1877, sched. ii. art. 144. COLLECTOR OF GODAVERY *v.* ADDANKI RAMANNA PANTULA - - - xiii. 147

43. —— *Act XV. of* 1877, *Arts.* 142, 144—*Adverse Possession—Dispossession*] Art. 144 of Act XV. of 1877, relating to adverse possession, only applies where no other article is specially applicable.—Where Plaintiffs were proprietors of land but declined to engage for the land revenue, in consequence of which the Defendants were admitted so to do and to obtain possession:—*Held*, that there was a dispossession of the Plaintiffs within the meaning of art. 142, and that a suit by the Plaintiffs brought after the expiration of the thirty years' settlement with the Defendants was barred. NAWAB MUHAMMAD AMANULLA KHAN *v.* BADAN SINGH - - - xvi. 3

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I. MAHOMEDAN LAW—ALIENATION.

1. —— *Suit to set aside Ikrars as Forged—Undue Influence—Copy of Registered Document—Regulation XX. of* 1812, *s.* 2, *cl.* 15—*Constructive Gift to Minor—Constructive Change of Possession—Mushaá.*] A Mahomedan father was alleged to have executed, first, on the 14th Magh, 1254, in favour of his infant son, a hibbanamah of some lakhiraj lands charged with a religious trust; second, on the 19th Assim, 1256, a hibbanamah to the same son of a 10-annas share of certain zemindaries. The mother was also alleged to have executed to the same son a hibbanamah (reciting the acknowledgment thereof by the father as guardian of the infant) of certain shares of other properties.

On the 29th Falgoon, 1259, the said infant executed an ikrar to his father, making his probable brothers and sisters co-heirs in the properties contained in the second hibba, and his father the manager thereof. On the same day he executed to his mother an ikrar of a like purport as regarded her hibba. On the 16th Aughran, 1263, having attained his majority, he executed a third ikrar, in effect confirming the previous ikrars, and granting certain allowances out of the said properties.

In a suit by the son to set aside the three ikrars as forged, and for possession with mesne profits of the properties the subject of the three hibbanamahs:—*Held*, that the two earlier ikrars having been found to be genuine, the High Court (although it held the third and confirmatory ikrar not to be proved) was wrong in declining to give effect to the two former on the ground that they were executed by an infant, and under undue influence, when neither the plaint nor the issues had directly raised these points, and when no evidence had been taken relating thereto.

Held, with regard to the first hibbanamah, of which a document purporting to be a copy from the registry had been tendered in evidence, that such copy was inadmissible as statutory evidence under Regulation XX. of 1812, sect. 2, cl. 15, the original not having been proved to be "lost, destroyed, or not forthcoming," nor any proof given by the subscribing witnesses that the original had been duly executed.

Held, further, with regard to the two other hibbanamahs, that the rights of the parties ought to be governed by the provisions contained therein and in the three ikrars read and construed as a whole. No declaration, however, to that effect could be made, nor any relief granted in the present suit, having regard to its form and to the prayer of the plaint.

I. MAHOMEDAN LAW—ALIENATION—*contd.*

Under Mahomedan law, where there is on the part of a father or other guardian a real and *bonâ fide* intention to make a gift, the law will be satisfied without change of possession, and will presume the subsequent holding of the property to be on behalf of the minor donee.

The rule of Mahomedan law that a gift of mushaâ or an undivided part in property capable of partition is invalid, does not apply to definite shares of zemindaries, which are in their nature separate estates with separate and defined rents. A[illegible]ROONISSA KHATOON *v.* ABEDOONISSA KHATOON [ii. 87

2. —— *Inconsistent Issues—Forgery—Undue Influence—Gift to co-Sharer—Mushaâ—Gift when Donor out of Possession.*] Case where it was held upon the evidence, overruling the judgment of the High Court, that a hibbanamah which the plaint alleged to be a forgery was a genuine document, that it was executed by a purdanashin lady, who well knew what she was doing, and was bound thereby.

Where a Plaintiff sues alleging that a deed purporting to be executed by herself is a forgery, the Court ought not to admit the inconsistent issue whether it was executed under undue influence.—But where the issue of undue influence is rightly raised, the Court should consider (1), whether the transaction is a thing which a right-minded person could be expected to do; (2) whether it was improvident; (3) whether legal advice if wanting was necessary; (4) whether the transaction originated with the donor.

Where one of three Mahomedan co-sharers gives his share before division to either of the other two, such gift is not invalidated by the doctrine of Mooshaâ.—Where a gift is public and authorizes the donee to take possession, which is in fact taken subsequently, the gift is not invalidated because the donor was not at the time in possession, and did not, therefore, at the time transfer it.—*Kali Das Mullick* v. *Kanhya Lal Pundit* (Law Rep. 11 Ind. Ap 218) followed. MAHOMED BUKSH KHAN *v.* HOSSEINI BIBI xv. 81

3. —— *Deed of Gift—Construction—Ariat.*] A Mahomedan deed after providing for the absolute gift (hibeh-bil-ewas) of two mouzahs, proceeded:—"I do declare and record that the aforesaid sister in law (*i.e.*, the donee) may manage the said village for herself, and apply the income to meet her necessary expenses, and to pay the Government revenue":—*Held*, that under Mahomedan law, these words did not necessarily cut down or limit the operation of the absolute gift otherwise effected either to a gift for life or to an ariat or resumable loan. In this case they were descriptive of the motive of the donor, and ineffectual to control the operation of the technical words of gift. HAJI MAHOMED FAIZ AHMED KHAN *v.* HAJI GHULAM AHMED KHAN - - - - - - viii. 25

4. —— *Gift—Mushaâ—Possession validates Gift—Declaration by Donor.*] Whether a gift of undivided property (mushaâ) is valid or not under Mahomedan law, possession given and taken under such gift effectually transfers the property.—A declaration by the donor in the deed of gift that possession has been given binds

I. MAHOMEDAN LAW—ALIENATION—*contd.*

the heirs of the donor; and possession once taken cannot be invalidated by any subsequent change of possession. SHEIKH MUHUMMAD MUMTAZ AHMAD *v.* ZUBAIDA JAN - - xvi. 205

5. —— *Estates in Remainder—Vesting—Deed of Compromise—Construction.*] Mahomedan Law does not recognise vested estates in remainder.—Where a deed of compromise between a Mahomedan widow and the sons of her deceased husband stipulated that the former should remain proprietor, and that the latter should be entitled to succeed, *held*, that the title to succeed must be contingent upon the sons surviving the widow, and that it would be opposed to Mahomedan law to hold that the deed created in them vested interests which passed to their heirs on their death in the lifetime of the widow. ABDUL WAHID KHAN *v.* MUSSUMAT NURAN BIBI - xii. 91

6. —— *Conditional Grant—Construction—Interests similar to vested Remainders—Mortgage—Rate of Interest—Act. XXIII. of* 1861, *s.* 10—*Act X. of* 1877, *ss.* 209, 266.] Where by a Mahomedan deed of settlement a husband granted the lands in suit to his wife on condition that if she had a child by him the grant should be taken as a perpetual mokurruri, and in case of no child being born as a life mokurruri with remainder to the settlor's two sons:—

Held, that the two sons took definite interests under the deed similar to vested remainders though liable to be displaced, and that such interests were liable to attachment, not being mere expectancies within the meaning of Civil Procedure Code, s. 266.

Semble, a sale which purports to carry all the interest of the judgment debtor includes any enlargement of that interest subsequent to attachment, as in this case by the intervening death of the settlor, no child having been born.

A decree for sale of mortgaged property having been obtained by a first mortgagee in a suit against the mortgagors only, the assignee of the mortgage bought the same. It appeared that the Appellant had succeeded to four out of five subsequent mortgages executed prior to suit, and also to a number of subsequent mortgages executed pending or after the suit:—

Held, that the District Judge was wrong in not distinguishing between the mortgages in respect of their being executed before or after suit. As regards the former, the Appellant not having been a party to the decree for sale, was entitled to redeem the purchaser; as regards the latter, he was bound by the decree for sale, and his interest passed to the purchaser.

Held, further, that although in the decree for sale the rate of interest was cut down, as regards the decree-holder and after decree, from the stipulated to the Court rate, that provision enured only to the benefit of the judgment debtor as a party to the suit. The Appellant seeking to redeem the first mortgagee must pay the rate of interest as stipulated in the mortgage, there being no jurisdiction either under sect. 10 of Act XXIII. of 1861, or Civil Code Procedure, s. 209, to cut it down. AMES CHUNDER SIRCAR *v.* MUSSUMMAT ZAHOOR FATIMA - - xvii. 201

II. MAHOMEDAN LAW - CUSTOMS.

7. —— *Immoral Customs—Kanchans—Adoption by Kanchan Custom.*] *Held*, that certain customs of the Kanchans which aim at the continuance of prostitution as a family business are contrary to Mahomedan law, immoral, and not enforceable:—*Held*, that a Mahomedan woman who is adopted according to one of such customs by the head of a Kanchan brothel is not thereby severed from her family; and that her property, however acquired, will at her death devolve according to Mahomedan law.—Whether she acquires by her adoption any legal rights in the property of the brothel, *quære*. GHASITI *v.* UMRAO JAN - - - - - - xx. 193

III. MAHOMEDAN LAW—DOWER.

8. —— *Prompt Dower—Limitation.*] Prompt dower is exigible immediately, but limitation does not begin to run until demand has been made, or until the marriage is dissolved by death or otherwise. MUSSUMUT MULLEEKA *v.* MUSSUMUT JUMEELA - - - - Supp. 135

9 —— *Prompt Dower—Limitation—Demand and Refusal.*] Prompt or exigible dower is a debt always due and demandable, and the *Statute of Limitations* runs from a clear demand and refusal thereof.—An unsuccessful application by a wife to be allowed to sue for her dower *in formâ pauperis*, though opposed by her husband in a counter petition which denies his liability in respect thereof, is not such a demand and refusal as to constitute a cause of action. Such application merely expresses an intention to demand, if allowed to do so in a particular way. RANEE KHAJOOROONISSA *v.* RANEE KYEESOONISSA ii. 235

10. —— *Oudh Laws Act*, 1876—*Reasonable Dower.*] Where the amount of dower allowed by the First Court as reasonable under the *Oudh Laws Act*, 1876, in a suit by the wife to enforce an excessive stipulated amount, had been altered by the Judicial Commissioners; their Lordships, though reluctant to overrule the exercise of a discretionary jurisdiction, examined the grounds on which the alteration was made, and restored the decree of the First Court. PRINCE MIRZA SULEMAN KADR *v.* NAWAB MEHDI BEGAM SURREYA BAHU - - - - xx. 144

11. —— *Dower — Dower not a charge on Deceased's Estate.*] A creditor of a deceased Mahomedan whether in respect of dower or otherwise cannot follow his estate into the hands of a *bonâ fide* purchaser for value to whom it has been alienated by his heir-at-law, whether by sale or mortgage.—*Mussumut Wahidunnissa* v. *Mussumut Shabrattun* (6 Beng. L. R. 54) approved.—Such alienee is bound by any decree charging the estate passed in a suit against the heir, pending at the date of alienation. SYUD BAZAYET HOSSEIN *v.* DOOLI CHUND - - - v. 211

IV. MAHOMEDAN LAW—GUARDIANSHIP.

12. —— *Guardian—Execution of Deed of Sale by Guardian—Minor.*] Where in a suit to have a deed of sale of immoveable property set aside on the ground that it had been executed by the father of the Plaintiffs during their minority in excess of his powers as their guardian, it appeared that the transaction, of which the sale was part, was beneficial to the minors and put an end to

IV. MAHOMEDAN LAW—GUARDIANSHIP—*continued.*

pending litigation:—*Held*, that by Mahomedan law it was within the power of the guardian to execute the deed under such circumstances. KALI DUTT JHA *v.* SHEIKH ABDOOL ALI - xvi. 96

V. MAHOMEDAN LAW—LEGITIMACY.

13. —— *Acknowledgment of Legitimacy — Act XXIII. of* 1861, *s.* 6.] According to Mahomedan law the acknowledgment and recognition of children by a father as his sons gives them the status of sons, capable of inheriting as legitimate sons. Such an acknowledgment may be either express or implied, in the latter case the inference from the acts of the father must depend upon the circumstances of each particular case:—*Held*, that a suit relating to a grant of property within the meaning of the Pensions Act (XXIII. of 1861) need not be dismissed because no certificate has been obtained before the commencement thereof: sect. 6 according to its true construction authorizing its continuance. NAWAB MUHAMMAD AZMAT ALI KHAN *v.* MUSSUMAT LALLI BEGUM [ix. 8

14. —— *Acknowledgment of Legitimacy — Adulterine Bastard.*] Case in which it was held that an acknowledgment and recognition by a Mahomedan of his son, with a view to give him the *status* of son capable of inheriting was sufficient to enable him to succeed as heir.—*Quære*, if the son had been shewn to have been the offspring of adulterous intercourse, that is if his mother had been previously thereto married to another man then and still living, would such acknowledgment and recognition have availed to legitimate him. SYED SADA KUT HOSSEIN *v.* SYED MAHOMED YUSOOF - - - - xi. 31

15. —— *Acknowledgment of Brother.*] *A.*, *B.*, and *C.*, Mahomedans of the Shiah sect, the illegitimate sons and daughter of *D.*, a Mahomedan female, by a married Hindu, obtained after the death of *D.*, a certificate of representation to her under Act XXVII. of 1860, as her sons and daughters, adducing evidence to shew that they were her sole children and heirs:—*Held*, not to amount to an acknowledgment by *A.* that *B.* was his brother to all intents and purposes, and entitled to inherit from him as such. MIRZA HIMMUT BAHADOOR *v.* MUSSUMUT SAHEBZADEE BEGUM - - - - i. 23

VI. MAHOMEDAN LAW — MARRIAGE AND DIVORCE.

16. —— *Ceremony of Marriage—Ratification after Puberty—Option of Dissent from Marriage —Succession.*] A ceremony of marriage was performed between Mahomedan minors in the Fazolee (nominal) form, the girl's father being dead and the marriage being contracted by her paternal grandmother. Thereafter the girl died, having attained the age of puberty, without ever meeting or communicating with her husband, and without ever expressing in any way assent to or dissent from the marriage:—*Held*, that by the law of the Shiah sect which governed the case, the marriage, since the assent of the girl after attaining puberty was not shewn, was imperfect from the want of the necessary ratification, and could not create any rights or obligations.

Though by the law of the Sunnis the

VI. MAHOMEDAN LAW—MARRIAGE AND DIVORCE—*continued.*

option of dissent must be declared by the girl as soon as puberty is developed; yet by the doctrine of the Shiahs the matter ought to be propounded to her so that she may advisedly give or withhold her assent.—*Held*, further, that under such circumstances the paternal grandmother of the girl was not entitled to inherit her estate; that the mother as her surviving parent was entitled to a third share thereof, and that the Appellants her half-brothers and sisters were entitled (without prejudice to any claims by third parties) to the residue. NEWAB MULKA JEHAN SAHIBA *v.* MAHOMED USHKURREE KHAN

[Supp. 192

17. —— *Profession of Faith—Sunni Rules of Descent Applicable to Sunni Widow—Marriage between Shian and Sunni.*] Case in which it was held on the evidence that a deceased Mahomedan widow died a Sunni, and that, therefore, her estate descended according to the Sunni rule of descent. It was admitted that during the marriage to a Shiah husband the deceased's outward acts and observances amounted to a profession of the Shiah faith. But the evidence raised a presumption that from birth till marriage the deceased was a Sunni, and established that during widowhood she returned to the Sunni sect, discarding the religion which had been temporarily imposed upon her as a Shiah wife. MUSSAMMAT HAYAT-UN-NISSA *v.* SAYYID MUHAMMAD ALI KHAN - - - - xvii. 73

VII. MAHOMEDAN LAW—RELIGIOUS OBSERVANCES.

18. —— *Religious Ceremonial—Sunni Law and Usage—Imam's Rights in his Mosque.*] In a suit by the Imam of a mosque to restrain the Defendants from interfering with the Plaintiff's right to conduct its service and from carrying on prayers therein under the guidance of an Imam appointed by themselves, it appeared that the parties were Sunnis, and that the points in dispute were whether the Plaintiff was entitled to introduce two Sunni observances to which the Defendants objected: (1.) The loud instead of the low-toned Amen; (2.) the performance of the Rafadain:—*Held* (1), that on the findings of fact (which in second appeal were conclusive) there was nothing in the constitution of the mosque which prohibited the ceremonial adopted by its Imam, and therefore the Plaintiff was within his right, and must be protected against the Defendants; (2) that the introduction of the observances in question into a mosque where they had not previously been used was not in violation of Sunni law or usage. FUZUL KARIM *v.* HAJI MOWLA BUKSH - - - xviii. 59

VIII. MAHOMEDAN LAW—SLAVERY.

19. —— *Act V. of* 1843, *s.* 3—*Slavery—Succession—Emancipator of Purchased Slave.*] Assuming that by the law of Willa the emancipator of a purchased slave is entitled to succeed and take the property of which such slave dies possessed or entitled, to the disinherison of her own natural heirs; such right of inheritance is taken away by Act V. of 1843, s. 3, which was in force at the date of the emancipated slave's death, *i.e.*, when the succession opened.—Act V. of 1843 is a remedial statute, entitled to the widest operation which its language will permit. SAYAD MIR UJMUDIN KHAN VALAD MIR KHAMRUDIN KHAN *v.* ZIA-UL-NISSA BEGAM - - - vi. 137

IX. MAHOMEDAN LAW—WILLS.

20. —— *Suit to set aside Deed and Will—Deed of Gift without Possession invalid—Devise under colour of a Religious Bequest—Presumption of Marriage from recognition of Son.*] *D. H.*, a Mahomedan, died in 1841, and his eldest son *E.*, possessed himself of all his property by virtue of a deed of gift and will dated in 1839. In 1852 the widow of a younger son, as guardian of the Respondent, her infant daughter, sued *E.* to set aside both deed and will, and to recover the property; but after a judgment was obtained she withdrew from the suit on terms of a compromise filed therein.

In 1860, the Respondent and her husband sued *E.*, now represented by the above-named Appellant, to set aside this compromise on the ground of minority, fraud, and collusion, for a review of the above-mentioned judgment, and to recover over and above the property comprised in the suit in which that judgment was given; first, a share derived by her father from his predeceased brother, second, a share in right of her grandmother *L.*, whom she alleged to have been a wife of *D. H.*, third, a share of property recovered by *E.*, by decree of the Privy Council:—

Held, that, the compromise being set aside on the issues found, both parties were remitted to their original rights, including the right of appeal from the above judgment. It appearing that the deed of gift by *D. H.*, purporting to give to *E.* one-third of his property, was without consideration, and was unaccompanied by delivery of possession, and was only intended to operate after *D. H.*'s death.

Held, that this was an evasion of Mahomedan law, which prevents a testator from interfering by will with the course of devolution of property among the heirs, and that the deed was invalid.

The will having declared *E.* the executor and representative of *D. H.*, there followed this passage: "I divide the remaining two-thirds now under my possession, uninterfered and unconcerned by any one else, into three portions. One portion to be laid out as the executor may think proper for the testator's welfare hereafter, by charity and pilgrimage, and keep up the family usage, namely, the expenses of the mosque and tazeeadaree of the sacred martyrs, and for the comfort of the travellers, the surplus amount to be appropriated by himself, the executor." Then it goes on to say that from the other two-thirds, "he shall keep every one by his good conduct and affection contented and satisfied. It is also necessary for all persons having rights, heirs, and friends connected with me to obey the said executor and consider him my representative." Then further: "None of the heirs have power to sell or divide the landed property mentioned in the will":—

Held, that this will in its general scope was in contravention of the Mahomedan law. The devise of one portion, considering the vague character of it, and that the beneficial interest

IX. MAHOMEDAN LAW—WILLS—*continued.*

was left to *E*, after he had devoted what he might deem sufficient to indefinite pious uses, was in reality an attempt to give under colour of a religious bequest an interest in one-third to *E.*, in contravention of Mahomedan law.

It appearing that the son of *L.* had always been treated by *D H.* and all the members of the family as a legitimate son, a presumption arose that *L.* was *D. H.'s* wife, which was strengthened rather than rebutted by the evidence. RANEE KHUJOOROONISSA *v.* MUSSAMUT ROUSHUN JEHAN [iii. 291

21. —— *Will—Construction—Bequest as distinguished from Wish—Gift on Illegal Condition.*] The testatrix directed: "I direct *S.* under this will to pay every month Rs.644. 1*a.* 7*p.* (being one-third of Rs.1933. 5*a.* 4*p.*, my monthly pay allowed by Government for Government promissory notes which are deposited) to my dependents and personal servants as detailed below: and they will give their receipts for the same. . . . Be it known that the expenses of imambara, &c., will be continued for ever, and also the pay of *G.* and *A.* will be defrayed for ever, *i.e.*, generation after generation. The rest of the servants will be paid for life only":—*Held*, that these words constitute a bequest, and are not merely the expression of a wish or direction, and also that payment thereof is not limited to the specific fund mentioned.—The title of the testatrix to the Government promissory notes being under a gift subject to a condition that she was to have the interest only for life, and that after her death there was to be a trust in perpetuity for all her heirs for all time: *quære*, whether under Mahomedan law such gift was not in its legal effect a gift to her absolutely, the condition being void. PRINCE SULEMAN KADR *v.* DARAB ALI KHAN [viii. 117

22. —— *Will — Construction — Management "always and for ever"—Restraint on Alienation.*] The Defendant having claimed to retain exclusive possession of the property in suit subject to the conditions of a will and in order to carry out its provisions:—*Held*, that, although by the will the management of the said property was given to the Defendant's father "always and for ever," that expression did not *per se* extend the interest beyond the life of the person named:—*Held*, further, that on the true construction of all the provisions in the will, the Plaintiff was entitled to the shares given her in full proprietary right, notwithstanding an attempt in the will to control her in the disposition thereof and to prevent her parting with them to strangers. MOULVI MUHAMMAD ABDUL MAJID *v.* MUSSUMAT FATIMA BIBI - - - - - xii. 159

X. MAHOMEDAN LAW—WUKF-NAMAH.

23. —— *Dedication of Property—Wakf—Fisabilillah Wakf—Construction—Wakf providing for Grantor's Family—Charitable Uses.*] Where it results from the provisions of a deed of gift that the same is not a *bonâ fide* dedication of property, but that the terms "fisabilillah wakf," &c., have been used as a veil to cover arrangements for the aggrandisement of the donor's family, and to make their property unalienable:—*Held*, that the properties comprised in the deed are not

X. MAHOMEDAN LAW — WUKH-NAMAH — *continued.*

thereby converted into wakf property, but are merely subjected to a charge to the extent of the charitable purposes prescribed therein.—*Quære*, as to what will constitute a valid wakf, and how far provisions for the benefit of the grantor's family may be engrafted thereon.—*Muzhurool Huq* v. *Puhraj Ditarey Mahapattar* (13 Suth W. R 235), to the effect that certain provisions for the benefit of the grantor's family did not render an endowment invalid, approved. SHEIK MAHOMED AHSANULLA CHOWDHRY *v.* AMARCHAND KUNDU - - - - - xvii. 28

24. —— *Dedication of Property — Wakf — Charitable Uses—Wakf in Favour of Heirs Invalid.*] According to Mahomedan law there can be no valid wakfnama without a substantial dedication of property to religious or charitable uses at some time or other.—*Sheik Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu* (Law Rep. 17 Ind. Ap. 28) followed.—Where the legal heirs of the settlor were the only objects of his bounty, and no possession was given in the lifetime of the settlor, the intention being to make the settled estate devolve from one generation of his descendants to another without its being alienable by them or liable to be taken in execution for their debts:—*Held*, that the transaction was invalid either as a settlement, or, if made with consent of heirs, as a will. ABDUL GAFUR *v.* NIZAMUDIN - - - - xix. 170

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MANAGEMENT "ALWAYS AND FOR EVER"
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MANAGER APPOINTED BY COURT OF WARDS
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MARGINAL NOTE IN SUNNUD, EFFECT OF
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MARINE INSURANCE—"*Open cover*"—*Insurance of Goods before Shipment—Contract.*] An open cover, or proposal to insure before the goods to be insured are shipped, was given by the Respondents to *M.* in order that he might give it to the charterer, who after shipment applied for policies to the amount mentioned in the cover and was refused:—*Held*, that such application

MARINE INSURANCE—*continued.*
constituted an acceptance of a subsisting proposal, and that there was a binding contract with the charterer to issue a policy in terms of the open cover. The asking for two policies did not prevent the acceptance being sufficient as there was a refusal to give any. BHUGWANDASS *v.* NETHERLANDS INDIA SEA AND FIRE INSURANCE COMPANY OF BATAVIA - - - xvi. 60

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MONOPOLY OF SALT MANUFACTURE
See SALT DEPARTMENT. [viii. 172

MORTGAGE — *Usufructuary Mortgage — Conditional Sale—Contract—Construction.*] By a deed purporting to be one of usufructuary mortgage, dated the 2nd of July, 1815, the mortgagors agreed to pay to the mortgagee, who was put in possession, 2500 pons and interest, stipulating that the rents of the mortgaged lands should be applied, first, in payment of government revenue; second, in payment of the salary of a manager; third, in reduction of the mortgage debt. It was then provided that 2000 pons should be repaid by instalments; namely, on the 9th of April, 1816, 500 pons; on the 10th of April, 1817, 500 pons; and on two subsequent dates two several sums of 500 pons. The mortgagors, in reference to the balance then remaining, covenanted as follows: "And in the year 1819-20 a settlement of the accounts of the receipts and disbursements shall be made, and any amount that may be due, after deducting payments out of the principal and interest as aforesaid, we undertake to pay in cash in full" on a particular day named, and to "redeem the mortgage." In default whereof the land should be valued, and the mortgagee should buy at that valuation so much thereof as would satisfy the balance due to him, the mortgagors remaining liable for any unpaid balance of debt which might remain due after the whole of the said land was purchased as aforesaid.—None of the instalments were paid, and no settlement of accounts was come to. The debt, however, was admitted, assuming the transaction to be one of mortgage only, to have been liquidated in 1866-7:—

Held, that this mortgage was not one by conditional sale, and that the mortgagors were entitled to the lands with mesne profits from 1866-67. No presumption arises that the agreement for absolute sale in certain events was ever carried out between the parties according to its terms, the contemplated settlement of accounts being a necessary preliminary to the performance of that contract.—*Patthabhiramier* v. *Vencatarow Naicken and Others* (13 Moore's Ind. Ap. Ca. 560) explained and approved. It refers exclusively to mortgages by conditional sale, and rules that on breach of the condition the sale becomes absolute.

But *quære*, whether in case of mortgages by conditional sale executed since 1858 the parties must not be held to have contracted in reference to an erroneous course of decisions then commenced in *Madras* (and subsequently followed in *Bombay*) to the effect that no such sale can ever become absolute, not even by foreclosing the equity to redeem. THUMBASAWMY MUDELLY *v.* MAHOMED HOSSAIN ROWTHEN - - ii. 241

2. —— *Certified Purchaser—Suit for Possession.*] In a suit for possession by the certificated purchaser of one-third of certain mouzahs which had been sold in execution of a decree obtained by the mortgagee against the Defendant as mort-

MORTGAGE—*continued.*

gagor; it appeared that the Defendant had in a previous execution sale at the instance of a second mortgagee of the same property, bought the same, subject to his own first mortgage.—The High Court held that the Plaintiff should be treated not as a purchaser, but as a mortgagee in respect of his purchase-money. They then directed that only so much of the original mortgage debt as should be apportioned against the share bought by the Plaintiff should be realized in his favour:—*Held*, that this ruling and direction were founded on a misapprehension; that the purchaser had a right to possession of the property which he had bought, and that the Defendant had no equity to prevent it. SYED LUTF KHAN *v.* FUTTEH BAHADOOR - - xvi. 129

3. —— *Contract—Sale with Right to Repurchase—Construction.*] *Held*, that according to the true construction of two documents they did not establish the relationship of mortgagor and mortgagee between the parties thereto, but purported to be and were in effect an absolute sale with a right to repurchase within ten years.—*Alderson* v. *White* (2 De G. & J. 105) approved, to the effect that, *primâ facie*, an absolute conveyance containing nothing to shew that the relation of debtor and creditor is to exist between the parties does not cease to be a conveyance and become a mortgage because there is a right to repurchase. BHAGWAN SAHAI *v.* BHAGWAN DIN [xvii. 98

4. —— *Construction—Implied Stipulation.*] A firm being in difficulties executed a mortgage to its creditors Shortly afterwards some of the creditors named therein sued the firm and obtained decrees.—In a suit brought by other creditors named in the mortgage for sale of the mortgaged property to the extent of their rights, and to recover their debts as due to them thereunder from the Defendants personally:—*Held*, that such suit must be dismissed It appearing that the deed had never been acted upon, and that, notwithstanding that there was no stipulation to that effect, the intention and agreement were that the deed should not take effect unless all the creditors came in and were bound by it, the same could not be enforced. AJUDHIA PERSHAD *v.* SIDH GOPAL - - - - xiv. 21

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See DECREE. 4.

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See DEEDS. 2.

—— - - - - - xvii. 201
See MAHOMEDAN LAW. 6.
See Cases collected under the heads of MORTGAGEE and MORTGAGOR.

MORTGAGE BOND - - - iii. 1
See LIMITATION. 7.

MORTGAGE BY BENAMEEDAR - xix. 203
See ESTOPPEL. 4.

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See BENAMEE TRANSACTION. 5.

MORTGAGE BY GUARDIAN - - xii. 47
See GUARDIAN. 3.

MORTGAGE BY WIDOW OF HUSBAND'S ESTATE - - - - viii. 8
See HINDU LAW. 90.

MORTGAGE EXTINGUISHED - - x. 62
See MORTGAGOR. 1.

MORTGAGE KEPT ALIVE - - xi. 126
See MORTGAGOR. 2.

MORTGAGE OF ALL INSOLVENT'S ASSETS
See INSOLVENCY. 3 [xix. 15

MORTGAGE OF SUB-PROPRIETARY RIGHT PRIOR TO CONFISCATION - xi 1
See OUDH LAW. 9.

MORTGAGE TERM EXPIRING AFTER FEB. 13, 1856 - - - - iii. 85
See OUDH LAW. 27.

MORTGAGE TO SECURE GENERAL BALANCE
See DEEDS. 1. [vii. 83

MORTGAGEE—*Undivided Share—Partition.*] A mortgagee of an undivided share in land may be enforced against lands which, under a butwara or revenue partition, have been allotted in lieu of such share, whether such lands be in the possession of the mortgagor or of one who has purchased his right, title, and interest. Lands allotted in severalty by the butwara to the co-sharers of the mortgagor are not subject to the mortgage.—The case of *Nawab Sidhee Nuzur Ali Khan* v. *Rajah Ojoodyaram Khan* (10 Moore's Ind. Ap. Ca. 540), approved. BYJNATH LALL *v.* RAMOODEEN CHOWDRY AND OTHERS - - - - i. 106

2. —— *Second Mortgagee—Decree for Possession.*] In a suit brought in 1872 by the representative of a second mortgagee to recover possession of the mortgaged land from the representatives of the mortgagor, it appeared that the second mortgagee had been placed in possession thereof in 1846 by decree of Court, but had in 1847 been dispossessed at the suit of the first mortgagees, upon whose being paid off in 1870 the mortgagor re-entered upon the land:—*Held* (reversing the decision of the High Court of *Allahabad*), that such entry gave a cause of action to the second mortgagee, and that he was entitled to resume possession of the mortgaged land. The decree of the first Court, which was in favour of the Appellants, was also reversed, so far as it decreed interest upon the mortgage-money during dispossession. NARAIN SINGH *v.* SHIMBHOO SINGH [iv. 15

3. —— *Reg. XXXIV. of* 1803, *ss.* 9, 10—*Usury Laws.*] A stipulation in a mortgage (governed by the usury laws) by which the mortgagee relieves himself from the statutory obligation of filing accounts under the 9th and 10th sections of Reg. XXXIV. of 1803, is valid so long as it appears that such stipulation is not a device for giving to the mortgagee a higher rate of interest than that to which he is by law entitled. BADRI PARSHAD *v.* BABU MURLIDHUR [vii. 51

4. —— *Interest by Decree—Interest, Stipulated Rate of.*] Although in a decree for sale obtained by the first mortgagee against the mortgagors, the rate of interest after decree was cut down from the stipulated to the Court rate, *held*, that such provision in the decree enured only to the

MORTGAGEE—*continued.*

benefit of the judgment debtor as a party to the suit, and that the Appellant, as seeking to redeem the first mortgagee, must pay interest at the stipulated rate, there being no jurisdiction either under sect 10 of Act XXIII. of 1861 or Civil Procedure Code, sect. 209, to cut it down. AMES CHUNDER SIRCAR *v.* MUSSUMMAT ZAHOOR FATIMA xvii. 201

5. —— *Foreclosure—Reg. XVII. of* 1806, *s.* 8 *—Notification of Foreclosure—Service.*] In a suit by the heirs of the mortgagees of certain property, for possession and for registration of names, against the mortgagors thereof and certain purchasers of the equity of redemption in part thereof, it appeared that proceedings had been taken to obtain foreclosure under Reg. XVII. of 1806; that no sufficient proof of notification, under sect. 8. of the Reg., to the mortgagors of the Plaintiff's petition of foreclosure had been given in the suit; that the zillah Judge in the foreclosure proceedings had found due service of the foreclosure petition on a mere statement to that effect by the nazir; that six out of nineteen mortgagors had admitted due service of the petition: —*Held* (1), that the finding of the zillah Judge in the foreclosure proceedings, so far from being conclusive, was not even *primâ facie* evidence in the suit of service, sufficient to shift the *onus* of proof in regard thereto.—(2.) The duties of the zillah Judge in foreclosure proceedings are of a ministerial nature, and service of the petition therein must be strictly proved in a suit to enforce them.—(3.) The year allowed for redemption runs from the date of notification, and not from the date of the Judge's order on the petition.—*Mohesh Chunder Sein* v. *Mussamut Tarinee* (10 Suth. W. R. F. B. 27) approved.—(4.) The mortgage being for one entire sum, of one entire share of property, giving one entire right against all the mortgagors, notification to the above-mentioned six mortgagors would be insufficient to warrant the foreclosure of the whole property or any of it.—(5.) The purchasers of the equity of redemption, whether they have taken possession or not, having purchased prior to the foreclosure proceedings, must be duly served. NOBLADLE NARAIN SING *v.* DWARKA LAL MUNDUR - - - - - - v. 18

6. —— *Foreclosure—Reg. XVII. of* 1806, *s.* 8 *—Notice of Foreclosure—Service of Notice.*] In foreclosure proceedings under Reg. XVII. of 1806, the provisions of sect. 8 must be strictly observed. They are not merely directory, but prescribe conditions precedent to the right of the mortgagee to enforce forfeiture of the estate of the mortgagor.—*Norender Narain Singh* v. *Dwarka Lal Mundur and Others* (Law Rep. 5 Ind. Ap. 18) followed.—An admission in the pleadings that some notice of foreclosure had been received, coupled with an omission to raise any issue as to its validity, does not preclude a defendant from questioning such validity in appeal.—Where it appeared that the notification served upon the Defendant was not a perwannah under the seal and official signature of the Judge, did not notify from what date the year of redemption began to run, and was not and did not purport to be a copy of the petition for foreclosure: —*Held*, that the requirements of sect. 8 had not been complied with, and that the Plaintiff's suit for proprietary possession as upon the completion of foreclosure proceedings, must be dismissed. MADHO PERSHAD *v.* GAJADHAR - - xi. 186

MORTGAGEE—*continued.*

7. —— *Foreclosure—Notice of Foreclosure—Reg. XVII. of* 1806, *s.* 8*—Deposit of Debt and Part of Interest.*] In those parts of *India* where *Bengal* Reg XVII. of 1806 is in force, the right to redeem a mortgage by conditional sale is governed entirely by the Regulation and not by the terms of the condition.—Where within a year after service of the notification of a foreclosure petition the mortgagor deposited the principal debt and interest for the last year, alleging that interest for the previous years was according to the condition to be recovered by separate suit:—*Held*, that his suit for redemption must be dismissed. There had been default in payment of the interest due, and by sect. 8 the mortgage, notwithstanding the condition relied upon, had been finally foreclosed. SAYYID MANSUR ALI KHAN *v.* BABU SARJU PARSHAD - xiii. 113

MORTGAGEE BY ESTOPPEL - - xix. 203

See ESTOPPEL. 4.

MORTGAGEE OF CO-PARCENER'S SHARE CAN ATTACH AND SELL - - xx. 116

See HINDU LAW. 35.

MORTGAGEE WITH LEAVE TO BID xvi. 107

See RES JUDICATA. 17.

MORTGAGOR—*Mortgage Extinguished.*] Whether a mortgage paid off is extinguished or kept alive depends upon the intention of the parties; but *held* that it must be presumed, in the absence of an expressed intention to the contrary, that when one, claiming to be absolute owner of an estate, borrows money to pay off a mortgage, there being no intermediate incumbrance, he intends to extinguish it. MOHESH LAL *v.* MOHUNT BAWAN DAS - - - - - - x. 62

2. —— *Mortgage kept Alive—Purchaser of Equity of Redemption.*] The purchaser of an equity of redemption in reference to immoveable property situated in the *Hyderabad* Assigned Districts, paid off the first mortgage thereon with notice of a second mortgage:—*Held*, that he must be assumed, according to the rule of justice, equity, and good conscience there applicable, to have intended to keep the first mortgage alive, and that therefore he was entitled to stand in the place of the first mortgagee and to retain possession against the second mortgagee until repayment.—The doctrine laid down in *Toulmin* v. *Steere* (3 Mer. 210), that the purchaser of an equity of redemption cannot set up a mortgage which he has got in against subsequent incumbrances of which he had notice, is not to be regarded as a rule of justice, equity, and good conscience, and therefore cannot be applied to such Indian transactions as are governed by that rule. GOKULDASS GOPALDASS *v.* RAMBUX SEOCHAND - - - - - - xi. 126

3. —— *Res Judicata—Suit to Redeem—Apportionment—Parties.*] A purchaser of a portion of mortgaged property who as Defendant in a foreclosure suit sets up a title paramount to the mortgagee, and is on his own prayer dismissed

MORTGAGOR—*continued.*

with costs as having no title to redeem:—*Held*, overruling the High Court, to be bound by such order and incapable thereafter of claiming to redeem.—*Held* further, overruling the High Court, that the proportion of mortgage charge payable by the purchaser of a fragment of an equity of redemption cannot be ascertained in the absence of the purchasers of other fragments, or by taking an account as between himself and the mortgagee alone. Still less can such a purchaser, without any accounts being taken at all, be decreed possession of his fragment of the mortgaged property, clear of the proportion of mortgage money chargeable thereon, on payment to the mortgagee of the sum for which on the disclaimer of the purchaser he (the mortgagee) himself bought in the self-same equity of redemption. NILAKANT BANERJI *v.* SURESH CHUNDER MULLICK - - xii. 171

4. —— *Suit to Redeem—Plaint—Limitation—Act XXIII. of* 1861, *s.* 11.] Where in 1877 a mortgagor sued to redeem lands which had been included in a mortgage executed in 1806, but based his claim on a decree obtained by the mortgagees in 1825, under which an account had been taken of what was due under the mortgage, no date being fixed for redemption:—*Held*, that redemption could only under Act XXIII. of 1861, s. 11, be effected under the said decree, and was barred, and that a fresh suit for the same purpose could not be brought. The Plaintiff could not fall back, contrary to his plaint, on the mortgage of 1806; nor could he contend that limitation ran from the acknowledgment thereof, no issue to that effect having been raised. HARI RAVJI CHIPLUNKAR *v.* SHAPURJI HORMUSJI [xiii. 66

5. —— *Redemption — Incumbrancer pendente lite—Incumbrance prior to Suit by Mortgagee.*] A decree for sale of mortgaged property having been obtained by a first mortgagee in a suit against the mortgagors only, the assignee of the mortgage bought the same. It appeared that the Appellant had succeeded to four out of five subsequent mortgages executed prior to suit, and also to a number of subsequent mortgages executed pending or after the suit:—*Held*, that the District Judge was wrong in not distinguishing between the mortgages in respect of their being issued before or after suit. As regards the former, the Appellant not having been a party to the decree for sale was entitled to redeem the purchaser; as regards the latter, he was bound by the decree for sale and his interest passed to the purchaser. AMES CHUNDER SIRCAR *v.* MUSSUMMAT ZAHOOR FATIMA - - - xvii. 201

MORTGAGOR AND MORTGAGEE - ix. 147
See ESTOPPEL. 2.

—— - - - - - vi. 145
See OUDH LAW. 30.

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See MAHOMEDAN LAW. 1, 2, 4.

NASLAN-BAD-NASLAN - - xiv. 7
See DEEDS. 3.

—— - - - - - xii. 205
See POTTAH. 6.

NATURAL CHANNEL - - - vi. 33
See RIPARIAN PROPRIETORS. 2.

NAWAB NAZIM DEBTS ACT, 1873—*Act XVII. of* 1873, *s.* 12.] The power of the Commissioners under sect. 12 of the *Nawab Nazim's Debts Act* (XVII. of 1873) is not controlled by the preamble; and a suit cannot proceed to recover any property which they have decided is held by the Government for the purpose of upholding the dignity of the Nawab. OMRAO BEGUM *v.* GOVERNMENT OF INDIA - - - - - x. 39

3. —— *Act XVII. of* 1873.] In a suit against the Government to recover an annuity with arrears, on the ground that the Government held property of the late Nawab Nazim on which the annuity was charged:—*Held*, that, according to the true construction of the *Nawab Nazim's Debts Act*, 1873, an award of the Commissioners thereunder to the effect that the property in suit was free from the said charge was binding and conclusive:—*Held*, further, that no charge had been created, the documents relied upon not disclosing an intention so to do. OMRAO BEGUM *v.* SECRETARY OF STATE FOR INDIA [xix. 95

NEW ISSUE IN APPEAL - i. 268; xix. 179; [Supp. 131
See PRACTICE. 41, 40, 43.

NEW OBJECTION IN APPEAL COURT xix. 191
See SALES FOR ARREARS OF REVENUE. 9.

NEW OBJECTIONS - - - vii. 157
See ATTACHMENT.

NEW OBJECTIONS TO REPORT IN APPEAL [ii. 34
See PRACTICE. 42.

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See PRACTICE. 44.

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See ISSUES. 3.

NOMINATION OF SUCCESSOR BY GOVERNMENT - - - iii. 154
See HINDU LAW. 52.

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See PRACTICE. 14.

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See PRACTICE. 31.

NOTICE OF ENHANCEMENT - ii. 193
See ENHANCEMENT. 2.

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NOTIFICATION OF FORECLOSURE - v. 18; [xi. 186; xiii. 113
See MORTGAGEE. 5, 6, 7.

NOVATION OF DEBT - - - xviii. 37
See LIMITATION. 5.

OBJECTION TO ADMISSION OF APPEAL IN INDIA AS ULTRÀ VIRES, WHEN TO BE MADE - - - ii. 205
See PRACTICE. 6.

OBSTRUCTION TO TITLE - - - v. 87
See DECLARATORY DECREE. 5.

OCCUPANCY RIGHTS — *Land Tenure — Chur Land—Lease—Renewal of Lease.*] By the terms of an ijara (1865) the Defendants were entitled at the end of a term of five years to a renewal of their lease of the chur land in dispute at a rent to be fixed according to the measurement of the land to be made at that time, and to the productive powers of the land. Three years after the expiration of the said term a notice was served on the Defendants to come to a new settlement with the Plaintiff, and in 1874 the Plaintiff sued to recover possession. The Defendants claimed a right of occupancy acquired under Act VIII. of 1869 (*Bengal*), or under Act X. of 1859:—*Held*, that the Defendants holding as ijaradars prior to and during the lease of 1865 did not create in them a right of occupancy, and that the Plaintiff had a right to turn the Defendants out of possession at the expiration of the term of five years, except so far as that right was qualified by the stipulations for a renewal; that the Defendants at the expiration of that lease had an equitable right to renewal not exceeding five years, according to the stipulations in the agreement; but that it was too late to rely upon their title to a renewal, which if it had been granted would now have expired. JARDINE, SKINNER & Co. *v.* RANI SURUT SOONDARI DEBI - - - v. 164

2. —— *Land Tenure.*] In an action of ejectment it appeared that the Defendant was holding over after expiration of a lease granted by the Plaintiffs, but that as to part of the land leased the Defendant had held it continuously for more than twelve years under prior leases for the purpose of cultivating it as a ryot in which there had been no stipulation for re-entry:—*Held*, that the Defendant had a right of occupancy, and could not be ejected.—*Sheo Prokash Misser* v. *Ram Sahoy Singh* (8 Beng. L. R. 165) approved. —A right of occupancy cannot be transferred. CHUNDRABATI KOERI *v.* HARRINGTON - xviii. 27

ONUS PROBANDI—*Suit to Set Aside Deeds—Execution of Deed—Purdanashin.*] In a suit for setting aside deeds some evidence ought to be given by the Plaintiff in order to impeach such deeds; and he is not entitled, merely on proof of heirship, to throw on the Defendant the burden of shewing a better title. Where a purdanashin lady, living apart from her relations and natural advisers, makes a deed in favour of a person who has on some occasions acted as her man of business, the strongest proof ought to be given by him that the transaction was a real and *bonâ fide* one, and was fully understood by the lady whose property is dealt with. TACOORDEEN TEWARRY *v.* NAWAB SYED ALI KHAN - i. 192

2. —— *Execution of Deed—Purdanashin—Principal and Agent—Account Stated.*] In the case of deeds and powers executed by purdanashin ladies, it is requisite that those who rely upon them should satisfy the Court that they have been explained to and understood by those who execute them.—In a suit to recover moneys lent against a purdanashin lady upon an account settled by her husband under a mooktarnama, which besides conferring ordinary powers authorized "all acts done by the said mooktar, such as giving and taking loans to and from others":—*Held*, that in the absence of evidence that the

ONUS PROBANDI—*continued.*

moneys had been borrowed by the husband on behalf of the wife, or that he was her agent carrying on business by her authority, the suit must be dismissed. According to the construction of the mooktarnama the husband had no authority to bind the wife by a mere statement of account. SUDISHT LAL *v.* MUSSUMUT SHEOBARAT KOER - - - - viii. 39

3. —— *Suit for Possession.*] In a suit for possession after establishment of the Plaintiff's right by inheritance:—*Held*, that the judgment of the Subordinate Judge was very unsatisfactory in that it erroneously assumed the Plaintiff's right by inheritance, called on the Defendant in possession to prove his title, and found, contrary to the whole weight of evidence, that the Defendant's title thereto as the legally adopted son of the last owner was not proved. KALI KISHORE DUTTA GUPTA MOZOOMDAR *v.* BHUSAN CHUNDER [xvii. 159

4. —— *Execution of Deed—Purdanashin.*] Where the grantor is a purdanashin, old, illiterate, and incapable of business, the grantee her confidential managing agent, and the grant is made without any valuable consideration, and confers on the grantee under the disguise of a trust, an important pecuniary benefit:—*Held*, that the *onus* is on the grantee of shewing conclusively that the transaction is honest, *bonâ fide*, well understood, the subject of independent advice, and free from undue influence. WAJID KHAN *v.* RAJA EWAZ ALI KHAN - - xviii. 144

5. —— *Suit for Possession.*] In a suit for proprietary possession the Plaintiff deduced a title by inheritance coupled with an allotment to his ancestor of the land in suit by Commissioners of Partition; the Defendant pleaded as to a portion of the land that it had been included in such allotment by mistake of the Commissioners, and that he had derived a title thereto adversely to the Plaintiff:—*Held*, that there being no evidence of any error in the allotment, and no evidence of any adverse title in the Defendant, the High Court were in error in modifying a decree for possession of the whole of the land claimed and in measuring off by mere guesswork a portion of it as claimed by the Defendant. SARODA PROSUNNU PAUL *v.* SHAM LALL PAUL - xix. 75

6. —— *Execution of Bond—Hindu Widow.*] *Held*, that the *onus* of proving due execution of a bond sued upon lay upon the Plaintiff, who relied upon the signature of a Hindu widow as binding the estate which she represented.—*Baboo Kameswar Pershad* v. *Run Bahadoor Singh* (Law Rep. 8 Ind. Ap. 8) referred to.—A third Court cannot entertain an appeal upon any question as to the soundness of a finding of fact by a second Court, however unsatisfactory such finding, if examined, may be. RAMRATAN SUKAL *v.* MUSSUMAT NANDU [xix. 1

7. —— *Suit for Possession.*] It is not the law that where the Plaintiffs are shewn to be the rightful owners of the lands in suit, it is for the ryot Defendants to shew that they are entitled to retain possession. MOHIMA CHUNDAR MOZOOMDAR *v.* MOHESH CHUNDAR NEOGI - xvi. 23

8. —— *Boundary Cases.*] In boundary cases

ONUS PROBANDI—*continued.*
an Appellant must come prepared to shew clearly where the decree appealed from is wrong, and what other course is right; it is insufficient to raise doubts as to the correctness of the decision. RAJCOOMAR ROY v. GOBIND CHUNDER ROY xix. [140

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II. OUDH LAWS—EFFECT OF CONFISCATION

1. —— *Confiscation in Oudh, Effect of—Re-grant—Construction.*] The effect of Lord *Canning's* proclamation of the 15th of March, 1858, was to divest all the landed property from the proprietors in *Oudh*, and to transfer it to and vest it in the British Government. Consequently all who since that date claim title to such property must claim through the Government.—Where a re-grant is made to a former owner the new title will depend entirely on the terms of the re-grant, and if such re-grant is made for life only, no suit can be maintained to rectify an alleged mistake, and for declaration of an absolute title according to the tenor of the sunnuds by which the property was held under the old dynasty and prior to the confiscation. NAWAB MALKA JAHAN SAHIBA *v.* DEPUTY COMMISSIONER OF LUCKNOW - - - vi 63

2. —— *Confiscation, Effect of—Abandonment of Confiscation—Houses in Lucknow—Limitation—Revival of prior Title.*] By Lord *Canning's* proclamation of the 15th of March, 1858, all the proprietary rights in the soil of *Oudh* were confiscated; and therefore in any suit to recover a mouzah situated therein, the Plaintiff must shew a title acquired within twelve years previously by some grant or proceeding of the Government subsequent to that proclamation.—As to the effect of Lord *Canning's* proclamation and of Sir *James Outram's* proclamation dated the 22nd of March, 1858, with reference to houses in *Lucknow*, *quære*. But it appearing in reference to the houses in suit that it was the intention of the Government to abandon altogether the confiscation, and to leave the former owners to their rights in the same way as if there had never been any confiscation:—*Held*, that on a plea of limitation by Defendant in ejectment, alleging possession prior to the proclamations, the issue must be tried and determined in the same manner as if there had never been any confiscation at all.—Issues settled accordingly, and case remanded. PRINCE MIRZA JEHAN KUDR BAHADUR *v* NAWAB AFSUR BAHU BEGUM - - - vi. 76

3. —— *Confiscation—Abandonment of Confiscation—Revival of prior Title.*] *Held*, with regard to a property which had been confiscated by Lord *Canning* in 1858, the confiscation having been subsequently annulled without any intention on the part of the Government to make a grant in favour of any person, that it must be treated as if there had never been any confiscation at all. Consequently a title thereto accrued or possession thereof enjoyed prior to the confiscation could be used to defeat an adverse claim PRINCE MIRZA JEHAN KADR BAHADOOR *v.* NAWAB BADGHOO BAHOO SAHIBA - - - - xii. 124

III. OUDH LAWS—RE-GRANTS IN FULL PROPRIETARY RIGHT.

4. —— *Confiscated Property — Re-grant to Hindu Widow—Act I. of* 1869, *s.* 8—*Construction of Sunnud—Limitations superseded by Act I. of* 1869—*Act I. of* 1869, *ss.* 3, 4, 22, *cl.* 11.] A sunnud of a taluka in *Oudh*, which had been previously confiscated by Government, was granted, with full power of alienation, to the widow of the last owner, a Hindu, and to her heirs for ever, her name being entered in the first and second lists under Act I. of 1869, s. 8, one condition of the grant being expressed to be that in the event of her dying intestate, or of any of her successors dying intestate, the estate should descend to the nearest male heir, according to the rule of primogeniture:—

Held, in suits against the widow's daughter, that the sunnud conferred upon the widow and her heirs male the full proprietary right and title to the estate, and not merely an estate for life with remainder to the male heirs of her husband in the event of her dying intestate without having alienated it in her lifetime.

Held, also, as regards succession, that the limitation in the sunnud was wholly superseded by Act I. of 1869, and that the rights of the parties claiming by descent must be governed by sect. 22 of that Act, the provisions of which are not controlled in any way by sect. 3 and sect. 4 thereof.

Held, that, under clause 11 of sect. 22, the above taluka, which was the separate property of the widow, descended, in the absence of a proved custom of her tribe to the contrary, to her daughter in preference to the son of the daughter of a rival widow, and the remote male heirs of her husband. BRIJ INDAR BAHADUR SINGH *v.* RANEE JANKI KOER. LAL SHUNKUR BUX *v.* RANEE JANKI KOER. LAL SEETLA BUX *v.* RANEE JANKI KOER [*v.* 1

5. —— *Confiscated Property — Re-grant — Grantee not affected by Trusts*.] *Held*, that a sunnud granted in conformity with Act I. of 1869, conferred an absolute title on the grantee *primâ facie*; and that the Plaintiffs had failed to establish that he had by his conduct granted to them interests in derogation of his title.—In a suit for declaration of proprietary right with a view to obtain mutation of names, *held* that mere possession of villages subject to paying to the talookdar a proportionate share of Government revenue is insufficient to establish proprietary right; and as the plaint did not disclose either a case of adverse possession or of sub-proprietary right, those claims being irrelevant to the relief prayed could not be entertained in appeal. BABU RAM SINGH *v.* DEPUTY-COMMISSIONER OF BARA BANKI - - - - - xvii. 54

6. —— *Re-grant—Grantee not affected by Trusts*.] *Held*, that the Defendant was entitled as proprietor to the lands included in his sunnud, not having been by agreement or otherwise clothed with any trust as regards the same. HAIDAR ALI KHAN *v.* NAWAB ALI KHAN - xvi. 183

IV. OUDH LAW—EFFECT OF RE-GRANTS.

7. —— *Confiscated Property — Re-grant — Grantee affected by Trusts—Effect of Sunnud—Reform of Sunnud — Summary Settlement —*

IV. OUDH LAWS—EFFECT OF RE-GRANTS— *continued.*

Talookdary Rights—Sub-settlement—Disabilities of Hindu Widow Talookdar—Act I. of 1869—*Letter of October* 10, 1859.] In a suit against the Respondent pending the regular settlement of talook *Sessendee* to establish Plaintiff's right to a direct settlement with her of four villages, and of a one-third share in seven others out of the twenty-six villages of which the talook was composed; it appeared that the Respondent had before judgment obtained a sunnud of the whole talook, his name being entered in the second schedule to Act I. of 1869, and further that he had admitted himself to be trustee for the Plaintiff as respects the said one-third share of seven villages. It also appeared that the Plaintiff was entitled to a sub-settlement of the said four villages:

Held (1), that the Plaintiff could not establish talookdary rights, for, having no interest in many of the villages, in order to make her a talookdar it would be necessary to reform the sunnud and break up the existing settlement and resettle the estate in three different portions.—*Quære*, whether the sunnud could be reformed after Act I. of 1869, without a special Act of the Legislature.—(2) The Plaintiff could not, under the summary settlement and the order of the 10th of October, 1859, acquire proprietary rights as against the Respondent, who was sole hereditary proprietor of the talook before the summary settlement, and whose rights were reserved under the Proclamation.—(3) The summary settlement not having been made with the Plaintiff *as talookdar*, neither it nor the order of 1859 conferred talookdary rights upon her:

Held, lastly, that the Plaintiff was entitled to a Hindu widow's estate of inheritance in the said four villages, and in one-third share of the profits of the said seven villages, and to have a sub-settlement of the four villages on terms of paying to the talookdar the Government demand *plus* 10 per cent.

Quære, whether the effect of the letter of October, 1859, and the subsequent legislation is to relieve a Hindu widow, though a talookdar, from the disabilities imposed upon her by the general law. WIDOW OF SHUNKER SAHAI *v.* RAJAH KASHI PERSHAD - - Supp. 220

See also - - - - iv. 198

8. —— *Act I. of* 1869, *Letter of October* 10, 1859—*Summary Settlement—Death of Talookdar before October* 10, 1859—*Vesting of Estate*.] In a suit brought in 1867 to establish Plaintiff's right to a talookdary in *Oudh*, as grandmother and heiress to a deceased infant rajah, with whom a summary and temporary settlement thereof had been made; it appeared that the talook had been, after the death of the infant rajah, and before the order of the 10th of October, 1859, resumed by the Government:—*Held*, that the Plaintiff as heir of a talookdar who had been permitted to engage for the revenue, but who had died before the letter of the 10th of October, 1859, was not entitled to the permanent hereditary and transferable proprietary right described thereby, but which had never vested in the deceased rajah.—Act I. of 1869 did not apply to

IV. OUDH LAWS—EFFECT OF RE-GRANTS— *continued.*

the case —RANEE OF CHILLARFE *v.* GOVERNMENT OF INDIA - - - - Supp. 237

See also - - - - iv. 208

9. —— *Confiscation, Effect of — Mortgage of Sub-proprietary Right prior to Confiscation—Re-grant of Talookdary — Talookdar's Liability to Sub-settlement.*] In a suit against a talookdar originally for the direct settlement of superior proprietary right but subsequently) for a sub-settlement of a sub-proprietary right in four villages (portion of the talook), it appeared that the Plaintiff became mortgagee thereof and of birt zemindary rights therein on the 4th of March, 1856 (*i.e.*, after the annexation of *Oudh*), for four years with possession: that on the 4th of June, 1857, a summary settlement was made with him only up to the time fixed for the redemption of the mortgage; that in 1859 the mortgagor's talook having been confiscated was granted to the Respondent. and the Plaintiff dispossessed in his favour. It appeared also that the transfer to the mortgagee, according to the true construction of the mortgage deed, and having regard to the intentions of the parties, was merely of a sub-proprietary right:—

Held, that the Plaintiff was entitled to such sub-settlement; but without prejudice to the Respondent's right (if any) to malikana at not less than 10 per cent. after the Plaintiff's interest had been perfected by foreclosure.—It is not essential to the enforcement of the rights of one who would otherwise be a subordinate zemindar that the talookdar should have some pecuniary interest in the sub-tenure, or that the zemindar should be bound to pay some substantial rent to his superior.

Quære, whether even if this mortgage did not confer a strictly sub-proprietary interest, a sub-settlement thereof could nevertheless be made.

A Plaintiff seeking by his plaint a direct settlement of a superior proprietary right may modify his claim to one for a sub-settlement of a sub-proprietary right.—*Widow of Shunker Sahai* v. *Rajah Kashi Pershad* (Law Rep. 4 Ind. Ap. 198) approved. GOURI SHUNKUR *v.* MAHARAJAH OF BULRAMPORE - - - vi. 1

10. —— *Confiscation—Lands excepted from Confiscation—Summary Settlement before October 10, 1859, and Sunnud before 1869—Re-grant of Joint Estate to a Single Member—Construction of Re-grant—Act I. of 1869, s. 2—Will—Act I. of 1869, ss. 16, 19—Custom.*] By the 8th paragraph of the *Oudh* Proclamation of March, 1858, it was declared that *C. L.* (at that time deceased), zemindar of *Mourawan*, and others, were thenceforward the sole hereditary proprietors of the lands which they held when *Oudh* came under British rule, and which formed part of the subject of the suits.—Summary settlements of the said lands were subsequently made with *G. S.* (one of the sons of *C. L.*) by the Government, between the 1st of April, 1858, and the 10th of October, 1859; a talookdári sunnud was granted to him before the passing of Act I. of 1869, and he entered into a kabooliyat for the same. His name was not entered in the 2nd schedule annexed to the Act, but *C. L.'s* was.

IV. OUDH LAWS—EFFECT OF RE-GRANTS— *continued.*

By a document dated the 7th of February, 1860, relating to property in the district of *Oonao*, and by other documents similar in effect relating to properties in other districts, the said *G. S.* directed as follows: "I have been requested by Government to submit an application on the subject of primogeniture, with a view that the talooka may not be split into pieces, as I would wish. Now the custom that has been followed in my family for generations past is this—that the eldest member of the family continues to be the head, while the others remain obedient to him; but every one possesses a share in the talooka. Under the custom of the family the other brothers are at liberty to have their shares separated should they wish it. The head has no power under the old custom to alienate the estate without consulting every sharer. I therefore wish that the old custom of maintaining the share of each shareholder be preserved in opposition to the one in accordance with which one member of the family is allowed to succeed."

In suits for partition amongst the descendants of *C. L.* and of his brother, who together constituted a Hindu joint family, governed by the Mitakshara law, all the property, the subject of the suits, having been found to be the joint property of the said family, it was contended on behalf of the Appellants in the first appeal that all the estates included in the sunnud to their father *G. S.*, and summary settlements, whether previously joint property of the family or not, became the separate self-acquired property of *G. S.*, that he was the sole malgoozar thereof, and that he and his sons were the sole beneficial owners of it; that he had no power to transfer it by will or by alienation *inter vivos*:—

Held, that the sunnud and summary settlements were a mere grant by the Government to one member of the family of property which belonged to the family jointly, and were not intended to enure to the sole benefit of the grantee, and did not affect the rights of the family. As regards such property granted to *G. S.* (if any) which was not previously part of the family estates, it was granted for services presumably rendered with the use of the joint family funds, and could not, therefore, be separate self-acquired property of *G. S.* within the meaning of Hindu law:—

Held, also, that, assuming any portion of such property to have been self-acquired by *G. S.*, he must, in consequence of Act I. of 1869, be deemed to have acquired therein a permanent heritable and transferable right, and had power by will or alienation *inter vivos* to transfer the same.

Held, also, that the document of the 7th of February, 1860, and other similar documents, so far as they related to the property in *Oudh*, amounted to a will within the definition of Act. I. of 1869, sect. 2. Taken in conjunction with other documents, and having regard to the acts of different members of the family under it, the same amounted to evidence of an alienation *inter vivos*

IV. OUDH LAWS—EFFECT OF RE-GRANTS— *continued*

which in *G. S.'s* lifetime transferred the property to the family to be held as joint family property.—No special mode of transfer is required by the Hindu law, even a verbal transfer is sufficient.—Sects 16, 19 of Act I. of 1869 have no retrospective effect:—

Held further, upon the evidence, that neither by custom, usage, contract, nor by any other means, has the property in dispute at any time become divisible upon partition in any other manner or in any other shares than *per stirpes* according to the Mitakshara.—A custom is a rule which in a particular family or a particular district has from long usage obtained the force of law. It must be ancient, certain, and reasonable, and being in derogation of the general rules of law, must be construed strictly.—A judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts.—The rule that a Court intending to call for fresh evidence should record its reasons for doing so, ought to be strictly adhered to. HURPURSHAD *v.* SHEO DYAL - - - - iii. 259

11. —— *Confiscation—Effect of Re-grant—Trusts—Beneficial Interests in Re-granted Estate.*] In a suit brought by some members of a joint Hindu family for a declaration of right against another member thereof, alleging that the Defendant being kabooliatdar of a certain taluka in *Oudh* on behalf of the joint family, obtained a sunnud in his own name, and intended to deprive the Plaintiffs of their rights, notwithstanding an admission made by him that they were entitled to shares:—

Held, that a person who has been registered as a talukdar under Act I. of 1869, and has thereby acquired a talukdary right in the whole property, may nevertheless have made himself trustee of a portion of the beneficial interest in lands comprised within the taluka for another and be liable to account accordingly.—*Widow of Shunkur Sahai* v. *Rajah Kashi Pershad* (Law Rep. Supp. 220) approved.

Case remanded accordingly to try whether notwithstanding the summary settlement, the sunnud, and the statute, the Plaintiffs or either of them had either before or after the passing of Act I. of 1869 acquired or become entitled to a beneficial interest in any part of the property.

Although the decision of the Commissioner in this case, affirming the decision of the settlement officer, was final under sect. 4 of Act XXXII. of 1871, the Commissioner's Court, being subordinate to that of the Judicial Commissioner, was not a Court of highest civil jurisdiction in the province within the meaning of Act II. of 1863, sect. 1. THAKOOR HARDEO BUX *v.* THAKOOR JAWAHIR SINGH - - - - iv. 178

12. —— *Confiscation — Re-grant — Effect of Grantee's Acts and Declarations of Trust—Act I. of 1869, Effect of on Previous Trusts—Implied Trusts.*] In a suit brought (1865) by some members of a joint Hindu family for a declaration of right against another member thereof, it appeared that although the Defendant, being kabooliatdar of a certain talook in *Oudh* on behalf of the joint family, had obtained in his own name

IV. OUDH LAWS—EFFECT OF RE-GRANTS— *continued.*

a sunnud thereof, and of certain villages granted by the Government as a reward for services rendered by the family during the mutiny, yet that from his acts and declarations he must be deemed to have consented to hold the same in trust for the joint family and as a joint estate, subject to the law of the Mitakshara:—*Held*, that Act I. of 1869, which was passed before the suit was decided by the Court of first instance, did not operate so as to change the relative conditions of the parties, and to put an end to the trust upon which the Defendant had previously held the estate. The estate in his hands remained thereafter subject to the trust, and there can be no difference in this respect between an express trust and a trust implied or presumed from a fair and reasonable interpretation of the acts and declarations of the Defendant. THAKOOR HURDEO BUX *v.* THAKOOR JAWAHIR SINGH - - - - vi. 161

13. —— *Confiscation—Re-grant—Declaration of Trust—Act I. of 1869, s. 10.*] In a suit by an adopted son against his father for a declaration of right with consequential relief in a share of certain estates, the Defendant pleaded that he was absolute owner thereof, and in regard to two of the talooks named was entered in the talookdar's list prepared under Act I. of 1869. It appeared that under a number of family transactions the property in suit had been given to the Defendant for such interest and with such right of succession to the Plaintiff as by virtue of the law of the Mitakshara attaches to ancestral immoveable estate as between father and son:—*Held*, that the Plaintiff was entitled to a declaration to that effect, and that sect. 10 was no bar to his assertion of the interest declared to be vested in him. SETH JAIDAL *v.* SETH SITA RAM viii. 215

14. —— *Widow of Deceased Talookdar—Declaration of Trust against Grantee.*] In a suit by a widow of a deceased talookdar against another widow and her transferee of the talook for a declaration of the Plaintiff's right to succeed to the estate in suit after the death of the first Defendant, the latter pleaded that by virtue of a summary settlement made with her in 1858, a sunnud granted in 1861, and the entry of her name on the first and third lists prepared under sect. 8 of Act I. of 1869, she had under sect. 9 an absolute estate with full power of alienation:—

Held, that the Defendant had by her acts and declarations constituted herself a trustee for the purpose of carrying into effect her husband's will, and that thereunder the Plaintiff was entitled to the declaration sought.

In another suit by a Plaintiff entitled under the said will in remainder after the determination of the life estates of the widows, for a declaration of the invalidity of the transfer of the estate, *held* that the suit was maintainable under the *Specific Relief Act*, and that although declaratory relief might have been reasonably refused to him as a remote remainderman in a second declaratory suit, yet the suit having been wrongly decided against him on the merits, he was in appeal entitled to the decree sought. THAKURAIN RAMANUND KOER *v.* THAKURAIN RAGHUNATH KOER - - - - ix. 41

IV. OUDH LAWS—EFFECTS OF RE-GRANTS— *continued.*

15. —— *Confiscation—Re-grant—Construction of Sunnuds—Family Arrangement.*] Case in which it was held upon the evidence that although two sunnuds had been granted by the Court of certain *Oudh* estates, one recognising a division into shares of the estates to which it related, the other establishing primogeniture, yet that by family arrangement between the co-heirs all were held by the co-sharers in specific and definite shares.—Although in a partition suit relating to an ordinary Hindu joint family mesne profits are not recoverable, yet a right to sue therefor exists when the enjoyment of specific and definite shares has been disturbed. SHANKAR BAKSH *v.* HARDEO BAKSH - - - - xvi. 71

V. OUDH LAWS—OUDH ESTATES ACT, 1869.

SUCCESSION.

16. —— *Act I. of* 1869, *2nd list—Estate Descendible to a Single Heir.*] *Held*, that where a talukdar's name is entered in the second list prepared under Act I. of 1869, and not in the third, the estate, although it is to descend to a single heir, is not to be considered as an estate passing according to the rules of lineal primogeniture. ACHAL RAM *v.* UDAI PARTAB ADDIYA DAT SINGH [xi. 51

17. —— *Act I. of* 1869, *s.* 22, *cl.* 4—*Daughter's Son treated as a Son—Will—Revocation of Will.*] Wherever it is shewn by sufficient evidence that a talukdar not having male issue has so exceptionally treated the son of a daughter as to give him in the family the place, consequence, and pre-eminence which would naturally belong to a son, if one existed, and would not ordinarily be conceded to a daughter's son, and has thus indicated an intention that the person so treated shall be his successor, such daughter's son will be entitled to succeed to the talukdary estate under Act I. of 1869, sect. 22, cl. 4.—A verbal authority given by a Hindu testator to a third party to destroy his will, although the instrument is not in fact destroyed, is sufficient in law to constitute a revocation.—*Semble*, a declaration by such testator to the principal officer of the district of his desire and intention that the Appellant should succeed him by virtue of a newly-passed statute (Act I. of 1869), and in supersession of the will, would have been in law a sufficient parol revocation of the will. MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SUBHAO KOOER - - iv. 228

18. —— *Act I. of* 1869, *2nd list—Estate Descendible to Single Heir—Act I. of* 1869, *s.* 22, *cl.* 11.] Where an estate is placed in class 2 and not in class 3 of Act I. of 1869 it descends to a single heir, not necessarily by the rule of lineal primogeniture. Degree prevails over line in the ascertainment of such heir, but where the degree is equal line prevails.—Sect. 22, sub-sect. 11, in referring the parties to the law which would govern the descent of property when the special provisions of the Act are exhausted, includes family custom in such law. NARINDAR BAHADUR SINGH *v.* ACHAL RAM - - - xx. 77

19. —— *Act I. of* 1869, *2nd list—Impartible Estate—Act I. of* 1869, *s.* 22, *cl.* 11.] An estate

V. OUDH LAWS—OUDH ESTATES ACT, 1869— *continued.*

created by sunnud and entered in lists No. 1 and No. 2 under sect. 8 of Act I. of 1869 descends according to the rules laid down in sect. 22, and as impartible estate.—On the death of the last male owner, who died a minor and unmarried, his mother succeeded as entitled to a woman's estate of inheritance, but his stepmother, who retained possession after his mother's death, did so as a trespasser, the nearest male heir to the last male owner being entitled to succeed under clause 11 of sect. 22:—*Held*, that certain villages in [illegible] having been purchased by the stepmother with the Defendant's money belonged to him; if purchased by her as a trespasser with the mesne profits of the estate, *quære*, as to whether they would have been an augmentation of the estate so as to pass with it. DEWAN RAN BIJAI BAHADUR SINGH *v.* RAE JAGATPAL SINGH - - - xvii. 173

WILLS.

20. —— *Wills — Registration — Bequest to Sister's Son—Bequest to Person entitled to Maintenance—Act I. of* 1869, *s.* 13.] *Held*, that a sister's son is not a person a bequest to whom in the lifetime of a brother is excepted from the necessity of registration under sect. 13 of Act I. of 1869.—*Quære*, whether a person entitled to maintenance has such an interest in the deceased's estate as would except a bequest in his favour from the like necessity.—A deposit of a will under Part IX. of Act VIII. of 1871 is not a registration as required by Act I. of 1869. HAJI ABDUL RAZZAK *v.* MUNSHI AMIR HAIDAR xi. 121

21. —— *Wills—Act I. of* 1869, *s.* 2—*Testamentary Statement to Public Officer—Registration—Act I. of* 1869, *s.* 20—*Act I. of* 1869, *s.* 22, *sub-s.* 6—*Brothers and their Descendants.*] *Held*, that a statement purporting to be of a testamentary character made by a talookdar in reply to inquiries by the Government under Circular Orders regarding the succession of talookdars, and subsequently recognised by the talookdar as his will, comes within the definition of "will" in sect. 2 of Act I. of 1869.—*Hurpurshad* v. *Sheo Dyal* (Law Rep. 3 Ind. Ap. 259) followed.—Such will is not revoked by another will void for non-registration under sect. 20 of the said Act, nor by the provisions of the Act:—*Held*, that by the true construction of sect. 22, sub-sect. 6, brothers take in the same manner as sons are directed to take by the earlier sub-sections, and that the descendants of a predeceased elder brother are preferential heirs to the younger surviving brother. HAIDAR ALI *v.* TASSADUK RASUL KHAN [xvii. 82

22. —— *Wills — Construction — "Maharani Sahiba"—Interest in Talookdary—Act I. of* 1869, *s.* 13, *cl.* 1.] *Held*, that the expression "Maharani Sahiba," according to the true construction of the will in which it was contained, was not a collective term comprehending both widows of the testator, but applied to the senior widow alone, except where the expression was qualified so as to leave no doubt that both were intended:—*Held*, further, that extrinsic evidence of the testator's intention ought not to be admitted. That construction should be adopted which gives

V. OUDH LAWS—OUDH ESTATES ACT, 1869—*continued.*

effect to the more reasonable and probable intention, having regard to the scheme of the will and the circumstances of the testator.—*Abbott* v. *Middleton* (7 H. L. C. 89) approved:—

Held, that a junior widow's right to succeed to a life estate in her husband's talookdary property expectant on the determination of the senior widow's life estate therein, but subject to be defeated by a valid adoption, is an interest in such estate within the meaning of Act I. of 1869, s. 13, sub-s. 1.

Although the suit by the junior widow prayed for possession and partition, their Lordships, while dismissing the suit upon that footing, declared the Plaintiff to be entitled to the annuity directed by the will as and for her maintenance, and further declared that it was chargeable upon and payable out of the entirety of the testator's estate, talookdary as well as non-talookdary. MAHARANI INDAR KUNWAR AND UDIT NARAYAN *v.* MAHARANI JAIPAL KUNWAR - - - - xv. 127

23. —— *Wills—Act I. of* 1869, *s.* 2—*Act I. of* 1869, *s.* 11—*Act I. of* 1869, *s.* 19—*Act I. of* 1869, *list* 2—*Estate Descendible to a Selected Heir.*] Case in which it was held that an instrument which had been executed by a talookdar (reserving a life interest) for the purpose of effecting after his death a transfer of property to the Respondent must, having regard to its substantial characteristics, to its answering the definition of a will contained in sect. 2, Act I. of 1869, and to its having been registered as a will, and setting aside mere technical expressions such as "tamlik," be regarded as a will and not as a transfer operating *inter vivos*:—

Held, that Act I. of 1869, s. 11, which gives not only to the original talookdar, but to every heir and legatee of a talookdar, power to transfer or bequeath the estate granted to him, is not controlled in its operation by the proviso to sect. 19. That proviso, to the effect "that nothing herein contained shall affect wills made before the passing of the Act," relates to the provisions contained in sect. 19 and not to those contained in the whole of the Act, and therefore does not control sect. 11.

Although an impartible estate will, if there is no indication to the contrary, descend according to the law of primogeniture: *held*, in this case, where the talookdary has been entered in list 2 and not in list 3, that a rule of selection and not primogeniture was the governing rule of the family. THAKUR ISHRI SINGH *v.* BALDEO SINGH - - - - - xi. 135

24. —— *Wills—Construction—Void Life Estate—Gift in Remainder—Act I. of* 1869, *s.* 13, *cl.* 1.] *Held*, that by the true construction of the will, a gift in remainder expectant upon the termination of a life estate is accelerated and not destroyed by reason of the gift of the life estate being void.—*Lainson* v. *Lainson* (5 De G. M. & G. 754) approved.—*Quære*, whether a widow of an *Oudh* talookdar is by virtue of her right to maintenance a person who would have succeeded to an interest in his estate within the meaning of Act I. of 1869, sect. 13, clause (1), so that an unregistered will would operate in her favour. AJUDHIA BUKSH *v.* MUSSAMUT RUKMIN KUAR - - - - - - xi. 1

V. OUDH LAWS—OUDH ESTATES ACT, 1869—*continued.*

ADOPTION.

25. —— *Adoption—Act I. of* 1869, *s.* 3, *cl.* 1—*Registration—Authority to Adopt—Act III. of* 1877, *s.* 17—*Act I. of* 1869, *s.* 13, *cl.* 1.] Act I. of 1869 requires an authority to adopt to be in writing, but does not require such writing to be registered, and Act III. of 1877, sect. 17, excepts from registration authorities to adopt which are conferred by will. "Intestate" in sub-sect. 1, sect. 13, means intestate as to estate.

An adopted son is a person who would have succeeded to an intestate within the meaning of that section, although the authority to adopt him was conferred by the will of such intestate.

An adoption otherwise valid is not prejudiced by an agreement between the adoptive mother and natural father that the former should retain her husband's estate during her life. Such an agreement does not affect the rights of the son or render his adoption conditional. BHAIYA RABIDAT SINGH *v.* MAHARANI INDAR KUNWAR [xvi. 53

VI. OUDH LAWS—LIMITATION.

26. —— *Res Judicata—Mesne Profits—Limitation—Oudh Rent Act (XIX. of* 1868), *s.* 83, *cl.* 15, *and s.* 106—*Civil Procedure as to Mesne Profits.*] Where a judgment of the Judicial Committee in 1879 declared that the Defendant to a suit brought in 1865 held the villages in suit in trust for the joint family to which he belonged, and as a joint family estate governed by the rules of the Mitakshara, and decreed that the Defendant do cause the said villages and the proceeds thereof to be managed and dealt with and applied accordingly:—

Held, that the Courts below were precluded from holding in subsequent suits that such Defendant held the said villages as an integral impartible estate, according to the rule of primogeniture without the said trust, or from declaring that the Plaintiff was entitled to have his share allotted on partition, to be held by him as sub-proprietor to the Defendant.

One of such subsequent suits brought in 1880, being by the said Plaintiff to determine the amount of wasilat, and to adjust accounts of the profits which had accrued during the pendency of the principal suit, to fix the extent of the share to which he was by agreement with some of his co-sharers entitled, for separate possession by partition of his shares of 113 villages and of all the property which had been acquired by Defendant with the profits of the joint estate and the joint property not included in the former suit, that Defendant should render accounts to the extent of the above-mentioned shares of the profits during his management and for payment:—

Held, (1.) that such suit was not barred by limitation. (2.) That the provisions of the *Oudh Rent Act* (XIX. of 1868), sect. 83, cl. 15, and sect. 106 might apply to the profits of the 113 villages of which the Plaintiff had been recorded as a shareholder, but could not apply to the rest of the joint estate whether moveable or immoveable.—

VI. OUDH LAWS—LIMITATION—*continued.*

(3.) That the provisions in the Civil Procedure Code applicable to mesne profits did not apply to a suit for partition, or for an account of the proceeds of family estate. PIRTHI PAL SINGH AND UMAN PERSHAD SINGH *v.* THAKUR JEWAHIR SINGH - - - - - - xiv. 37

27. —— *Act I. of* 1869—*Mortgage Term Expiring after the 13th of February,* 1856—*Onus Probandi*] Under Act I. of 1869 a suit for redemption is not barred where the instrument of mortgage fixes a term within which the mortgage might be redeemed, and such term did not expire before the 13th of February, 1856. In a suit for redemption, the mortgage deed, dated the 21st of July, 1840, having been lost, the Judicial Commissioner held that the *onus* lay, not upon the mortgagor to prove that the term did not expire before the 13th of February, 1856, but upon the mortgagee to prove that it did:—*Held*, by their Lordships, that the burden of proof was *primâ facie* on the mortgagor, regard being had, as respects the *quantum* of evidence required, to the opportunities which each party might naturally be supposed to have of giving evidence. RAJAH KISHEN DUTT RAM PANDAY *v.* NARENDAR BAHADOOR SINGH - - iii. 85

VII. OUDH LAWS—OUDH TALOOKDARS RELIEF ACT.

28. —— *Oudh Talookdars Relief Act* (*XXIV. of* 1870) *s.* 4, *cl.* 3—*Invalid Contract to Pay out of Proceeds of Taluk*] *Held*, that a mortgage bond which contains no personal contract to pay out of the mortgagor's personal estate, but is a mere contract to pay out of the hypothecated talooka, which at the date of the bond was under the operation of the *Incumbered Estates Act* (XXIV. of 1870), is invalid under sect. 4, cl. 3. NAROTAM DAS *v.* SHEO PARGASH SINGH xi. 83

29. —— *Oudh Talookdars Relief Act, s.* 10—*Appeal to the Commissioner from Decision of Manager.*] Case in which, having regard to exceptional circumstances and exceptional legislation, an appeal to the Commissioner of Division against a decision of a manager appointed under the *Oudh Talookdars Relief Act*, was *held* to have been rightly allowed, although preferred long after the period of six weeks prescribed by sect. 10. It appeared that the Appellant in the Court below was a minor, and incapable of exercising his right to appeal except through the manager, who himself made the order appealed from, and that the Respondents (present Appellants) had after the expiration of the said six weeks themselves prayed for a judicial determination of substantially the same questions as were raised by the present appeal. RAMJISDAS AND IMTIAZ ALI *v* RAJAH BHAGWAN DAX - - - v. 197

VIII. OUDH LAWS—OUDH SUB-SETTLEMENT ACT, 1866.

30. —— *Birt Tenures—Oudh Sub-settlement Act* (*XXVI. of* 1866)—*Mortgagor and Mortgagee—Redemption.*] In a suit (1870) to redeem a usufructuary mortgage, dated 1846, of a talookdary interest, with all its incidents, it appeared that most of the villages comprised therein were held by third persons under various birt tenures, valid and subsisting at the date of the mortgage, but that some of them were, in or before 1849, purchased by the mortgagee, who at the summary settlement after Lord *Canning's* proclamation was allowed to engage for all the villages, and to hold them as a talook, subject to rights of sub-settlement.—It appeared also, according to a settlement circular issued in *Oudh* on the 29th of January, 1861, that under the nawabi, birt tenures were presumably carved out of the talookdar's estate; that they were held under him upon terms varying according to the terms of the particular pattah or contract, and possibly according to the custom of a particular district; that they did not necessarily entitle the holders of them to engage directly with the Government for the revenue; that when such direct engagements took place, malikana was payable to the talookdar; that they were sometimes resumable, and when resumed, would fall into the parent estate; and that in all cases the relation of superior lord and tenant subsisted between the talookdar and the birtias; but that birts still subsisting entitle their holders to sub-settlement under the *Oudh Sub-settlement Act*, 1866.—It appeared also that the mortgagee, availing himself of his position as talookdar under the mortgage, had purchased the birts in question in this suit for an apparently inadequate sum, and had treated them as merged in the talook, engaging for them as talookdar and not as birtia, and taking no steps to keep them alive as distinct sub-tenures for his own benefit:—*Held*, that, under the peculiar circumstances of the case, the mortgagor was entitled, according to equity and good conscience, and consistently with English law, upon paying the original mortgage money *plus* the purchase-money of the birts, to redeem the estate as now enjoyed by the mortgagee. RAJAH KISHENDUTT RAM *v.* RAJAH MUMTAZ ALI KHAN - - - - - vi. 145

31. —— *Oudh Sub-settlement Act* (*XXVI of* 1866)—*Landlord and Tenant—Resumption*] Where the relationship of landlord and tenant is established, the tenant cannot defeat the landlord's right of resumption upon proper notice on the ground that time and undisturbed enjoyment has ripened his holding into a species of ownership, or that he has acquired by prescription a holding such as to entitle him to an under-proprietary right. He must allege and prove his right to remain undisturbed. THAKUR ROHAN SINGH *v.* THAKUR SURAT SINGH - - xii. 52

32. —— *Oudh Sub-settlement Act* (*XXVI. of* 1866)—*Under-tenures held under Contract—Sub-proprietary Rights*] Under-tenures held under contract, or under any arrangements from which a contract may be inferred, are within the definition of sub-proprietary rights given in the rules annexed to Act XXVI. of 1866, and their holders are entitled to a sub-settlement. MAHARAJAH OF BULRAMPUR *v.* UMAN PAL SINGH AND GANSH SINGH - - - - - v. 225

—— As to sub-proprietary rights - xv. 66, 106
See RES JUDICATA. 11, 12.

—— —— - - - Supp. 220; vi. 1
See OUDH LAW. 7, 9

IX. OUDH LAWS—OUDH RENT ACT XIX. OF 1868.

33. —— *Oudh Rent Act* (*XIX. of* 1868), *s.* 83, *cl.* 4—*Ejectment—Cancelment of Lease—Jurisdiction*.] Where by the terms of their lease the Defendants could only be ejected and have their lease cancelled "according to any law in force in *Oudh* with respect to persons holding an under-proprietary right in land," but by a later agreement the lessees might be ejected for default in rent:—*Held*, in a suit brought by the talookdar under the *Oudh Rent Act* for ejectment of the Defendants and cancelment of lease that the lease could not be cancelled under the *Rent Act*, and that the remedy under the agreement lay in the Civil and not in the Rent Court. RAJAH MADHO SINGH *v.* AJUDHIA SINGH - xv. 77

OUDH LAWS ACT, 1876 - - xx. 144
See MAHOMEDAN LAW. 10.

OUDH RENT ACT XIX. OF 1868, s. 83, cl. 4
See OUDH LAW. 33. [xv. 77

—— **s. 83, cl. 15, and s. 106** - - xiv. 37
See OUDH LAW. 26.

OUDH SUB-SETTLEMENT ACT XXVI. OF 1866 [v. 225; vi. 145; xii. 52
See OUDH LAW. 30–32.

—— - - - - - - vii. 17
See BIRT TENURES.

OUDH TALOOKDARI RIGHT - - viii. 14
See HINDU LAW. 72.

OUDH TALOOKDARS RELIEF ACT XXIV. OF 1870, s. 4, cl. 3 - - - xi. 83
See OUDH LAW. 28.

—— **s. 10** - - - - - - v. 197
See OUDH LAW. 29.

—— **s. 25** - - - - - - xi. 197
See HINDU LAW. 103.

—— —— - - - - - - xi. 88
See LIMITATION. 34.

PAGODA - - - iv. 76; xiv. 160
See RELIGIOUS ENDOWMENTS. 4, 7.

PANRIS - - - - - - vi. 238
See PRINCIPAL AND AGENT. 1.

PAROL REVOCATION - - - iv. 228
See HINDU LAW. 109.

PARTICIPATION IN NET PROFITS Supp. 86
See PARTNERSHIP.

PARTICULARS OF BREACHES OF PATENT
See PATENT. [xiii. 134

PARTICULARS OF FRAUD MUST BE STATED IN PLAINT - - - xv. 119
See PRACTICE. 27.

PARTIES - - - - - - ix. 21
See DECREE. 4.

—— - - - - - - xvii. 150
See EXECUTION OF DECREE. 10.

—— - - - - - - - xv. 1
See EXECUTION SALES. 9.

—— - - - - - - - xi. 197
See HINDU LAW. 103.

PARTIES—*continued.*

—— - - - - - - xii. 171
See MORTGAGOR. 3.

—— - - - - - - viii. 135
See PRACTICE. 31.

—— - - - - - - - v. 206
See RES JUDICATA. 3.

PARTITION - - - - vii. 162
See DESHGAT WATAN.

Cases collected under HINDU LAW. 41, 43, 66–71, 84, 97.

—— - - - - i. 157; xv. 167
See LIMITATION. 8, 10.

—— - - - - - - - i. 106
See MORTGAGEE. 1.

PARTNER CLAIMING COMPENSATION AGAINST HIS FIRM - - iii. 200
See CONTRACT. 2.

PARTNERSHIP — *Agreement — Construction — Participation in Net Profits—Creditor with Commission on Profits.*] Agreement in writing entered into between *W. & Co.*, British merchants, carrying on business at *Calcutta* with a Hindu rajah, by which, in consideration of moneys already advanced, and which might be thereafter advanced by the rajah to them, they agreed to carry on the business subject to the control of the rajah in several particulars; stipulating that the rajah should receive a commission of twenty per cent. on all profits made by the firm, until the whole amount of the debt due to him should be paid off, with twelve per cent. interest upon all cash advances, which had been, or might be thereafter, made by him to the firm. Further advances having been made by the rajah to the firm, *W & Co.* executed to him a mortgage of certain tea plantations, to secure the then amount of his advances, and the rajah by a deed released his right to commission and interest under the original agreement between them. No proceeds of the business were ever received by the rajah, and though he was credited in the books of the firm with a considerable sum, that sum was never received by him, and was afterwards written back in the books of the firm. The rajah did not interfere or exercise any such control in the business as to make him an ostensible partner in the firm:—

Held, having regard to the restrictions and modifications made of late in the rule of law formerly prevailing, to the effect that participation in the net proceeds of a business made the participant liable as a partner to third parties, and looking at the whole scope of the agreement, the primary object was to give security to the rajah as a creditor of the firm of *W. & Co.*, and that the participation given him in the net profits of the business was not sufficient to establish a partnership between *W. & Co.* and the rajah, as regarded third parties.

Although a right to participate in the profits of a trade is a strong test of partnership, and there may be cases where, from such participation alone, it may as a presumption, not of law, but of fact, be enforced; yet, whether that relation does or does not exist, must depend on the real intention and contract of the parties.—The cases of *Cox* v

PARTNERSHIP—*continued.*

Hickman (8 H. L. C. 268) and *Bullen* v. *Sharp* (Law Rep. 1 C. P. 86) referred to and acted on.

In the absence of any law or established custom existing in *India* in respect to partnership transactions, the law of *England* is to be resorted to for the principles and rules to guide the Courts. At the same time the usages of trade, and habits of business of the Indian community, so far as they may be peculiar or differ from those in *England*, are to be taken into consideration. MOLLWO, MARCH & Co. *v.* THE COURT OF WARDS [Supp. 86

PATENT—*Act XV. of* 1859, *s.* 34—*English Patent Law Amendment Act*, 1852, *s.* 41—*Plaint—Particulars of Breaches of Patent—Transfer of Suit—Jurisdiction of Local Court.*] The sole object of Indian Act XV. of 1859, s. 34, corresponding with sect. 41 of the English Patent Law Amendment Act, 1852, is to give the Defendant fair notice of the case which he has to meet; and it is quite immaterial whether the requisite information be given in the plaint itself or in a separate paper.—Particulars of breaches must be distinguished from particulars of objection for want of novelty. In the latter case the particular instances may not be within the knowledge of the patentee and must be specified; in the former the Defendant must know whether and in what respect he has been guilty of infringement.

Where three patents of the Plaintiff all related to one article, a kiln for burning bricks, and the second and third in date were for improvements upon the invention specified in the first, and the Plaintiff alleged a particular kiln constructed and used by the Defendant, and in his plaint not only referred to his patents, but indicated in the case of each of them the infringements which he complained of:—*Held*, overruling the High Court, that this was a sufficient compliance with the Act.—*Talbot* v. *La Roche* (15 C. B. 310), and *Needham* v. *Oxley* (1 H. & M. 248) approved.

Where the Court of Appeal sets aside the whole of the previous proceedings in a suit, it cannot direct a new and amended plaint to be filed, but must give the Plaintiff the alternative of having his suit dismissed or of withdrawing it, with leave to bring a new action.—*Held*, that under sect. 25 of the Civil Procedure Code the superior Court cannot make an order of transfer of a case unless the Court from which the transfer is sought to be made has jurisdiction to try it.—*Peary Lall Mozoomdar* v. *Komal Kishore Dassia* (Ind. L. R. 6 Cal. 30) approved.—A suit having been instituted in the Court of the Subordinate Judge, who was incompetent to try it, the same was transferred by consent of parties to the Court of the District Judge for convenience of trial: *held*, that such transference was incompetent, and that such consent did not operate as a waiver of the plea to the jurisdiction which was taken in the Defendant's written statement and subsequently insisted upon. LEDGARD *v.* BULL - - - - - - xiii. 134

PAYMENTS OF LAND REVENUE - xx. 160
See TRESPASSERS. 1.

PECUNIARY LIMIT OF JURISDICTION ix. 197
See RES JUDICATA 5.

PENALTY—*Double Rate of Interest.*] *Held*, that a provision made in a consent decree by instalments for payment of a double rate of interest was not in the nature of a penalty but a reasonable substitution of a higher for a lower rate under the following circumstances:—(*a*) On the whole amount of the decree, which was to become realizable if the first instalment should not be paid at due rate, and any two subsequent instalments should be in default and unpaid at the same time.—(*b*) On the like amount, if any instalment except the first were overdue.—(*c*) On the amount of the first instalment if that were overdue. RAI BALKISHEN DASS *v.* RAJA RUN BAHADOOR SINGH - - - - - x. 162

PENSIONS ACT OF 1871—*Act XXIII. of* 1871, *ss.* 3, 4—*Deshmukh—Jurisdiction.*] In a suit to recover from the Government certain emoluments due to the Appellant as deshmukh of four mehals, the Appellant alleged in his plaint that he was the hereditary deshmukh thereof; that as such, he and his ancestors had long been entitled to receive from the ryots a percentage upon that part of the revenue which was assessed in cash; that such rights were confirmed by a sunnud granted in 1777; that up to 1842 he received his dues directly from the ryots, but that since 1842 the Government had received them on his behalf, but in respect of the sums claimed had not accounted to the Appellant:—

Held, that the Judge was right in dismissing the suit before the settlement of issues, on the ground that it was excluded from the jurisdiction of the Civil Courts by the *Pensions Act*, 1871, s. 4. The deshmukh's right, in its inception and original character, and under the terms of the sunnud, is within the scope and operation of that section: and even as at present existing, irrespective of the terms of the sunnud, would fall within the scope of sect. 3. VASUDEV SADASHEV MODAK *v.* THE COLLECTOR OF RATNAGIRI - iv. 119

2. —— *Act XXIII. of* 1871 — *Toda garas hukks—Jurisdiction.*] The *Pensions Act* of 1871 applies to grants of money in respect of or in substitution for some right, privilege, perquisite, or office. Todà garas hukks which the Garasias used to collect from the villages before the establishment of British rule are a recognised species of property, capable of alienation, and therefore a right within the meaning of the Act:—*Held*, that an allowance of money by the Government under an arrangement with Plaintiff's ancestors in lieu of a hukk theretofore received by them falls within the Act, and that accordingly the Civil Courts cannot take cognizance of a suit relating thereto. MAHARAVAL MOHANSINGJI *v.* GOVERNMENT OF BOMBAY - - - - viii. 77

3. ——*Act XXIII. of* 1871, *s.* 6—*Certificate before Suit.*] *Held*, that a suit relating to a grant of property within the meaning of the *Pensions Act* (XXIII. of 1871) need not be dismissed because no certificate has been obtained before the commencement thereof; sect. 6 according to its true construction authorizing its continuance. NAWAB MUHAMMAD AZMAT ALI KHAN *v.* MUSSUMAT LALLI BEGUM - - - ix. 8

PENSIONS BY FOREIGN STATE - xvii. 181
See EXECUTION OF DECREE. 9.

PENSIONS IN PERPETUITY - xvi. 175
See DEEDS. 4.

PERPETUITY - - - - xii. 103
See HINDU LAW. 112.

PERSONA DESIGNATA xix. 101, 108; iii. 253; [xii. 72
See HINDU LAW. 23, 24, 107, 7.

PETITION - - - - xv. 209
See PRACTICE. 12.

PETITION OF APPEAL - - viii. 159
See PRACTICE. 49.

PETITION FOR SPECIAL APPEAL - v. 87
See PRACTICE. 11.

PETITION TO POSTPONE FILED IN WRONG COURT - - - - xi. 234
See EXECUTION SALES. 7.

PETITION TO RESCIND ORDER OF SPECIAL LEAVE - - - ii. 71
See PRACTICE. 1.

PLAINT—*Verification of Plaint—Act XIV. of* 1882, *s.* 435.] Where a branch bank was carried on by a manager holding a power of attorney under the seal of the company, and such manager had in his absence delegated, in pursuance of such power, all his authority to an accountant, but such substituted power omitted words giving power to sue:—*Held*, that such substitute had as acting manager authority under sect. 435 of the Civil Procedure Code to sign and verify a plaint by the company, being a "principal officer of the corporation" within the meaning of that section. DELHI AND LONDON BANK *v.* OLDHAM - xx. 139

—— - - - - - iii. 194
See CAUSE OF ACTION. 5.

—— - - - - - vi. 126
See HIGH COURT. 3.

—— - - - - - xiii. 66
See MORTGAGOR. 4.

—— - - - - - xiii. 134
See PATENT.

—— - - - xiii. 123; xix. 135
See PRINCIPAL AND AGENT. 3, 5.

PLEADER - - xiv. 154; xvii. 199
See LEGAL PRACTITIONERS. 2, 3.

PLEADING - - - - ix. 147
See ESTOPPEL. 2.

—— - - - - xvi. 107; xix. 234
See RES JUDICATA. 17, 19.

PLEDGE—*Conversion.*] *Held*, that a sale by a pledgee to himself of securities pledged is void; but it does not put an end to the pledge, so as to entitle the pledgor to recover them without payment of the amount thereby secured; nor does it entitle him to damages:—*Held*, further, that the pledgor is bound by re-sales duly effected by the pledgee to third persons after such abortive sales to himself:—But *held*, that where the pledgee has erroneously represented to the pledgor before such re-sales that his securities have been sold, they can no longer be regarded as pledged, and he becomes on such re-sales liable for the value thereof as for a conversion. NEIKRAM DOBAY *v.* BANK OF BENGAL [xix. 60

POLITICAL PENSION - - xvii. 181
See EXECUTION OF DECREE. 9.

POLLIEMS—*Land Tenure—Estate of Inheritance—Issue.*] An unsettled polliem in the *Madras* Presidency may be hereditary; whether it is so, must be ascertained by evidence in each case. Proof of possession, or receipt of rent by a person who pays the land revenue direct to Government, is *primâ facie* evidence of an estate of inheritance.—Where an issue, though in terms covering the main question in the cause, does not sufficiently direct the attention of the parties to the main question of fact necessary to be decided, and a party may have been prevented from adducing evidence, a fresh issue may be directed to try the principal question of fact.—The first issue raised in the lower Court was, whether a zemindary or the income thereof was answerable for the debt of the late zemindar.—Their Lordships granted an issue to try whether the late zemindar had an estate of inheritance in the zemindary which descended to his minor son as his heir.—Terms on which such issue will be granted. OOLAGAPPA CHETTY *v.* ARBUTHNOT - - - i. 268

2. —— *Land Tenure—Madras Reg. XXV. of* 1802, *s.* 2—*Madras Reg. XXXI. of* 1802—*Estate of Inheritance.*] The affirmative words of the 2nd section of *Madras* Reg. XXV. of 1802 did not either give new rights to the owners of lands not permanently assessed, or take away from them any rights which they then had. It merely vested in all zemindars an hereditary right at a fixed revenue upon the conclusion of the permanent assessment with them. The words "proprietors of land," as used both in the *Bengal Code* of 1793 and in the *Madras Code* of 1802, refer to "zemindars, independent talookdahs, and others who pay the revenue assessed upon their estates immediately to Government;" and the words "proprietary possession," as used in the recital of *Madras* Reg. XXV. of 1802, must also be read in a similar sense as meaning the possession and rights of a "proprietor" in the technical sense in which that word is used, viz., the person who pays the revenue immediately to Government.

The preamble of *Madras* Reg. XXV. of 1802 recognizes the right of private property, and does not assert a right on the part of Government to deprive or dispossess zemindars in their lifetime, or their heirs after their deaths, for the purpose of transferring their rights to Government, or to new holders at the will of Government, independent of any considerations connected with the realization of revenue.

The object of the *Madras* Reg. XXXI. of 1802 was only the protection of the revenue from invalid lakirij grants, and to provide for the mode of trying the validity of the titles of persons claiming to hold their lands exempt from the payment of revenue; it was not intended to confer upon Government any title which did not then exist. The words "alienations of land" refer not to mere transfers from one proprietor to another, but to grants for holding lands exempt from the payment of revenue.

A polliem may be hereditary though not permanently settled under Reg. XXV. of 1802; and the existence of a proprietary estate in polliems or other lands not permanently assessed, and the

POLLIEMS—*continued.*

tenure by which it has been held, are judicially determinable on legal evidence.—The polliem of *Marungapuri* is an ancestral hereditary polliem, and not subject to the appointment of Government.

In *India* the proof of possession or of receipt of rent by a person who pays the land revenue immediately to Government is *primâ facie* evidence of an estate of inheritance in the case of an ordinary zemindary. The evidence is still stronger if it be proved that the estate has passed, on one or more occasions, from ancestor to heir. There is no difference in this respect between a polliem and an ordinary zemindary. The only difference between a polliem or zemindary which is permanently settled and one that is not is that, in the former the Government is precluded for ever from raising the revenue; and in the latter, the Government may or may not have that power. COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI AND OTHERS - - - - - - i. 282

POSSESSION - - - - xiv. 101
See ACCRETION. 6.

—— - - - - - xx. 99
See TRESPASSERS. 2.

POSSESSION BY COLLECTOR - - ix. 99
See ADVERSE POSSESSION.

POSSESSION BY HINDU MANAGER OF JOINT FAMILY - - - - i. 9
See LIMITATION. 11.

POSSESSION BY PLAINTIFF WITHIN STATUTABLE PERIOD - ix. 99; xvi. 23
See LIMITATION. 18, 41.

POSSESSION UNDER ACT IV. OF 1840 vii. 73
See ACCRETION. 5.

POSSESSION VALIDATES GIFT - xvi. 205
See MAHOMEDAN LAW. 4.

POTTAHS—*Construction*—"*During the term of the Mokurruri*"—*Mokurruri Tenure.*] A pottah having been granted in 1808 to the Respondent's ancestor, "to continue during the term of the mokurruri" of the grantor; it appeared that the grantor's kubulyut, dated in 1878, acknowledged the power of the Government (which, however, had not been acted upon) to put an end to the lease of that date at the end of one year.—In a suit by the Appellants, who derived title from the said grantor, to annul the mokurruri tenure claimed by the Respondents, *held*, that the grant to the ancestor of the Respondents was not of an indefinite nature, enuring only for the life of the grantee, but passed to his heirs the whole interest of the grantor. BABOO LEKHRAJ ROY *v.* KUNHYA SINGH - - - - - - iv. 223

2. —— *Lease—Construction—Covenant—Assignment of Covenant.*] In a lease of fifty-one beegahs of land, from the terms whereof it appeared that the lessee's object in taking the said beegahs was that he might quarry therein, erect a factory and carry on mining operations, the lessors covenanted as follows:—"Within that aforesaid mouzah we will not give a pottah, let, give settlement to anybody. If you take possession according to your requirements of extra land over and above this pottah, and we shall settle any such lands with you at a proper rate."—*Held*, that, according to the true construction of this covenant, it related only to such additional land as the lessee or his assigns might require for the purpose of carrying out the object for which the lease was granted.—*Quære*, whether the lessee could assign the covenant, and whether the purchasers of the adjoining land from the lessors, with notice thereof, would be bound thereby. NEW BEERBHOOM COAL COMPANY *v.* BOLORAM MAHATA - - - - - - vii. 105

POTTAHS—*continued.*

3. —— *Construction—Mokurruri.*] A mokurruri ijara pottah does not necessarily import perpetuity. "Mokurruri" may do so, but not necessarily:—*Held*, on a consideration of the object of the pottah and its language and provisions as well as surrounding circumstances, that the intention to grant a perpetual lease did not sufficiently appear. MUSSUMAT BILASMONI DASI *v.* RAJAH SHEO PERSHAD SINGH - - ix. 33

4. —— *Construction—Ikrarnamah—Mokurruri.*] Where by a pottah and ikrarnamah of even date land was granted in mokurruri on perpetual tenure as an absolute acquittance of a specified sum due by the grantor, and it was stipulated that when the grantor or his heirs paid off the said sum without interest from their own pocket without taking money from any other person to the grantee or his heirs, then that the pottah should be returned, the grantor having no claim for mesne profits:—*Held*, that the transaction was not a mortgage, but evidenced a sale, the acquittal of a debt, and a power of repurchase by the vendor under certain conditions personal to himself. SITAL PERSHAD *v.* LACHMI PERSHAD SINGH - - - - - - x. 129

5. —— *Maintenance—Tribal Custom.*] Case in which it was held upon the evidence that according to tribal custom a gift or lease by way of maintenance was resumable at the will of the grantor. NAJBAN BIBI *v.* CHAND BIBI - x. 133

6. —— *Construction—Istimrari Mokurruri—Ba Farzandan—Naslan bad Naslan.*] The words "istimrari mokurruri" in a pottah do not *per se* import an estate of inheritance.—But the other terms of the instrument, the circumstances under which it was made, or the subsequent conduct of the parties, may shew the intention with sufficient certainty to enable the Courts to pronounce that the grant was perpetual.—The words "ba farzandan" or "naslan bad naslan" are not essential to convey an hereditary right. TOOLSHI PERSHAD SINGH *v.* RAJAH RAM NARAIN SINGH [xii. 205

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See REGISTRATION. 1.

POWER OF ATTORNEY—*Construction—Principal and Agent—Power to Sell or Purchase but not to Pledge.*] A power of attorney gave to the holders authority "for the purposes aforesaid to sign for me and in my name and on my behalf any and every contract or agreement, acceptance, or other document," the purposes aforesaid being "from time to time to negotiate, make sale, dispose of, assign, and transfer" Government promissory notes, and "to contract for, purchase, and accept the transfer" of the same:—*Held*,

POWER OF ATTORNEY—*continued.*
that upon the true construction of this power the holders were authorized to sell or purchase such notes, but not to pledge them.—*Bank of Bengal* v. *Macleod* (5 Moore's Ind. Ap. Ca. 1; 7 Moore, P. C. 35) distinguished. JONMENJOY COONDOO *v.* WATSON - - - - - - xi. 94

POWER OF JUDGE - - - - xiv. 160
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PRACTICE. Col.

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I. PRACTICE—IN THE PRIVY COUNCIL.

1. —— *Special Leave—Petition to Rescind Order of Special Leave.*] It appearing that the petition on which special leave to appeal had been granted contained a material misstatement of fact, their Lordships refused the costs of the appeal. There must be *uberrima fides* in applying for such leave, otherwise an order granting it will be rescinded on application by the Respondent at any time before the appeal has been actually entered upon. If such misstatement should appear, even at the latest stage, to have been made with the intention to deceive, the appeal will be dismissed. RAM SABUK BOSE *v.* MONMOHINI DOSSEE - - - - ii. 71

2. —— *Appealable Amount—Valuation under Stamp Act.*] A party who in observance of the rule of valuation prescribed by the stamp law of the country in which he sues, has paid stamp duty upon a sum lower than the appealable amount, is not thereby precluded from obtaining leave from the Courts of that country to appeal to Her Majesty in Council, if he can shew that the value of the property in dispute does reach the appealable amount. BABOO LEKRAJ ROY *v.* KANHYA SINGH - - - - - i. 317

3. —— *Special Leave.*] Rule against special leave to re-open the whole case, when application is made for the first time at the hearing of the appeal. THAKUR DARRIAO SINGH *v.* THAKUR DAVI SINGH - - - - - - i. 1

4. —— *Indian Registration Act*, 1871—*Special Leave.*] Special leave to appeal granted to try whether under the *Indian Registration Act*, 1871, a Zillah Judge can rescind an order of his own Court refusing to register a document. MEER REASUT HOSSEIN *v.* HAIDJEE ABDOOLLAH AND OTHERS - - - - - - i. 72

5. —— *Special Leave.*] Special leave to appeal granted in a suit which had been consolidated by consent of both parties. KRISTO INDRO SAHA *v.* HUROMONEE DASSEE - - i. 84

I. PRACTICE—IN THE PRIVY COUNCIL— *continued.*

6. —— *Special Leave at the Hearing—Nunc pro tunc—Objection to Admission of Appeal in India as Ultra Vires, when to be made.*] The leave to appeal granted by the Court in *India* being under the circumstances of the case clearly *ultra vires;* an objection by the Respondent, made before the argument on the merits had commenced, that the appeal was without authority was allowed to prevail, and the appeal was dismissed, but without costs—The right practice is to take objections of this kind at the earliest moment. It is, however, competent to their Lordships to hear it at any stage of the appeal, and also to grant in fitting cases special leave to appeal, *nunc pro tunc*, directing that the petition to appeal should go to Her Majesty, with the report upon the appeal itself. Such application refused in the present case, on the ground that the rights of the Appellant might be ascertained and enforced more satisfactorily in some other proceedings than by their Lordships under the irregular appeal sent up by the Court in *India*. GAJADHUR PERSHAD *v.* THE TWO WIDOWS OF EMAM ALI BEG - - - - - ii. 205

7. —— *Special Leave to Appeal from Interlocutory Order—Stay of Execution pending Appeal.*] Petition of special leave granted from an interlocutory order not appealable under the Code. Stay of execution refused, but an opinion intimated that pending the appeal the decree-holder should not be put in possession of the large sums in dispute. MAHARANI INDER KUMARI *v.* MAHARANI JAIPAL KUMARI - - - xiv. 1

8. —— *Special Leave—Civil Code Procedure, s.* 595—*Decree to Account Final.*] Special leave granted to appeal from a decree directing the Defendant to account; such decree being final within the meaning of sect. 595 of the Civil Procedure Code. RAHIMBHOY HIBIBHOY *v.* TURNER [xviii. 6

9. —— *Special Leave — Criminal Case.*] Although in very special and exceptional circumstances leave to appeal in criminal cases may be granted, misdirection by a Judge, either in leaving a case to a jury where there is no evidence or founded on an incorrect construction of the Penal Code, even if established, is insufficient for that purpose, especially where no miscarriage of justice has resulted. *Ex parte* MACREA xx. 90

10. —— *Misstatements in Petition for Special Leave—Concealment of Facts.*] The petition of special leave to appeal stated correctly two valid grounds for granting the same; but contained misstatements of fact which affected the third ground relied upon by the Petitioner:—*Held*, that any such petition is liable at any time to be rescinded with costs if it contains any misstatements or any concealment of facts which ought to be disclosed. It appearing, however, that there was in this case no intention to mislead, the appeal was heard and allowed, but without costs.—*Ram Subuk Bose v. Monomohini Dossee* (Law Rep. 2 Ind. Ap. 71) approved. MUSSOORIE BANK *v.* RAYNOR - - - - - ix. 70

11. —— *Petition for Special Leave—Appeal limited by Terms of Special Leave.*] Although it

I. PRACTICE — IN THE PRIVY COUNCIL — *continued*

is not an invariable rule that no questions can be raised at the hearing which are not indicated in the petition for special leave to appeal, yet where special leave had been obtained on the ground that important questions affecting a large community were involved in the decision sought to be appealed from, the Appellant was *held* to be precluded from objecting to the decree on the ground of its being declaratory only. SHEO SINGH RAI *v.* MUSSUMAT DAKHO - - v. 87

12. —— *Revivor—Petition—Proof.*] Where a revivor is sought of an appeal to Her Majesty in Council, the representative character of the persons to be substituted on the record for the party deceased should be proved in the Court below, whose duty it is to make a certificate on which their Lordships can act. HAIDAR ALI *v.* TARSADDUK RASUL - - - xv. 209

13. —— *Rehearing of Appeal by Privy Council—Relevant Case of New Matter.*] In a petition for rehearing of two appeals which had been fully heard upon their merits, and in which judgment had been given and reported to Her Majesty, and confirmed by regular orders in Council:—*Held*, that assuming that a relevant case of new matter had been made out the decision was final, and the petition must be refused. —There may be exceptional circumstances which will warrant this Board, even after an order of Her Majesty in Council has been made, in allowing a rehearing at the instance of one of the parties; but this is an indulgence with a view mainly to doing justice when by some accident, without blame, the party has not been heard and an order has been made inadvertently as if the party had been heard.—*Rajunder Narain Rae* v. *Bijai Govind Sing* (2 Moore's Ind. Ap. Ca. 220; S. C. 1 Moore's P. C. 117) referred to. VENKATA NARASIMHA APPA ROW *v.* COURT OF WARDS [xiii. 155

14. —— *Rehearing of Appeal by Privy Council —Irregularity—Non-appearance of Respondent.*] A Respondent, who has been properly made a party to a suit in the Courts below and bound by the proceedings therein, but who has not entered an appearance as Respondent to the appeal, or ordered any person to do so for him (the Appellant having failed to take the usual steps either to compel his appearance or to have the appeal regularly heard *ex parte* against him) is not entitled to have a rehearing of the appeal, unless by some accident, without any default on his part, the appeal has been inadvertently disposed of as if he had been heard.—*Rajunder Narain Rae* v. *Bijai Govind Singh* (1 Moore's P. C. Cases, 117; S. C. 2 Moore's Ind. Ap. Ca. 214), and *Ex parte Kistonauth Roy* (Law Rep. 2 P. C. 274), approved.—Where it appeared that a Respondent had full knowledge of the pendency of the appeal, and had furnished the funds for defending it in the name of another Respondent thereto, a rehearing was refused.—An issue whether or not such Respondent had been properly made a party to the suit in the Courts below, and whether or not the proceedings in *India*, so far as he was concerned, were *coram non judice*, can only be tried in a new suit in the Courts below; and

I. PRACTICE — IN THE PRIVY COUNCIL — *continued.*

quære whether in such suit he would be barred by an Order in Council, if made on appeal from a decree by which he was not bound. MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SUBHAO KOER - - - - - v. 171

15. —— *Concurrent Findings—Divorce Procedure.*] Although as a general rule the Judicial Committee will not reverse concurrent findings of the Courts in *India* on a question of fact, yet there may be circumstances to take such findings out of the scope of the general rule, as in the case of a divorce *a vinculo*, in which by Act IV. of 1869, sect. 17, a decree made by the Court of first instance is only binding on confirmation by the Chief Court, which decree is not to be considered as a separate judgment. HAY *v.* GORDON [Supp. 106

16. —— *Concurrent Findings—Mixed Law and Fact.*] Concurrent judgments of two Courts on a question of fact allowed to be disputed because the question of fact appeared to be a good deal mixed up with law. PAULIEM VALLOO CHETTY *v.* PAULIEM SOORYAH CHETTY - - iv. 109

17. —— *Concurrent Findings.*] The Judicial Committee will not disturb the concurrent finding of two Lower Courts on a question of fact. MUNNOO LALL *v.* LALLA CHOONEE LALL AND OTHERS [i. 144

18. —— *Concurrent Findings.*] The rule as to not disturbing concurrent findings of fact observed notwithstanding that part of the evidence was not considered by the first Court. RAM LAL *v.* SAIYID MEHDI HUSAIN - - xvii. 70

19. —— *Concurrent Findings—Mixed Law and Fact.*] Case in which concurrent findings of fact of the Lower Courts in *Madras*, to the effect that certain lands in suit belong to four devaswams, or religious endowments, were reversed, and the suits which had been decreed by both the Lower Courts against the Appellants were dismissed with costs; the decision, though ultimately one of fact, turning upon the admissibility or value of many subordinate facts, and involving the construction of documents and other questions of law. VENKATESWARA IYAN *v.* SHEKHARI VARMA [viii. 143

20. —— *Concurrent Findings.*] Where there were concurrent findings of fact that a purchase by a Mahomedan in the name of his sons was for their benefit, and that beneficial enjoyment by the sons had been proved, and destroyed the presumption of benami, *held* that such findings would not be questioned by the Committee.—A Mahomedan having directed property to be transferred from a benamidar to his wife, the first Court found that he did so intending the latter to hold for her own benefit, while the High Court found that the wife was to hold in the first instance as substituted benamidar, and subsequently for her own benefit, the findings as to possession by the transferee before the death of the donor being concurrent:—*Held*, that this was not sufficient concurrence to prevent further inquiry, and that on the evidence the view of the first Court was to be preferred. SYED ASHGAR REZA *v.* SYED MEDHI HOSSEIN KHAN - - xx. 38

I. PRACTICE — IN THE PRIVY COUNCIL — *continued.*

21. —— *Concurrent Findings.*] In a suit for an account against a mokhtar and cashier, it appeared that the Plaintiff had executed a deed of release on the 22nd of April, 1884, founded on an alleged adjustment of accounts, and that on the 8th of May, 1885, the Defendant had signed a document stating that there had been no such adjustment, and that he was willing to account which document he had unsuccessfully sued to set aside:—*Held*, that concurrent findings of ... to the effect that the release was a genuine document, that it had been preceded by a detailed examination of accounts made on behalf of the Plaintiff, and that the Defendant had used no unfair means to obtain it, disposed inferentially of the document of the 8th of May, 1885, and was fatal to the suit. RAJAH NILMONI SINGH *v.* KIRTI CHUNDER CHOWDHRY - - - xx. 95

22 —— *Hearing of Appeals—Formal Objection to Right to sue—Manager appointed by Court of Wards—Execution Sale—Purchaser entitled to Partition.*] The right, title, and interest under Mitakshara law of a father in the joint family estate having been attached in execution of a decree for money and sold, *held*, that the purchaser took the right which the father would have had to a partition, and the share which would have come to him on a partition being made.—The Court of Wards having appointed a manager on behalf of the infant Plaintiff, *held*, that the Plaintiff having a right to sue, any objection to the manager's authority was only a formal one, and could not be raised in appeal before their Lordships. BABOO HURDEY NARAIN SAHU *v.* PUNDIT BABOO ROODER PERKASH MISSER xi. 26

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See ATTACHMENT.

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See DEEDS. 3.

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See HINDU LAW. 103.

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See REVIEW OF JUDGMENT. 2.

II. PRACTICE — IN COURTS OF FIRST INSTANCE.

23. —— *Valuation of Suit.*] A party to a suit having adopted a certain valuation cannot, in the same suit, object to that valuation. KRISTO INDRO SAHA *v.* HUROMONEE DASSEE - i. 84

24. —— A Plaintiff in ejectment must give strict proof of his title. TIERY *v.* KRISTODHUN BOSE - - - - - - i. 76

25. —— Whether it would be competent to the Court to re-open a question of account against a clear finding upon a question of fact relating to the account, and made by the Commissioner upon evidence properly before him, *quære*. WATSON *v.* AGA MEHEDEE SHERAZEE - - i. 346

26. —— *Secondary Evidence — Amount of search for Original.*] Where the Subordinate Judge finds that there has not been such an amount of search for an original document as to justify the Court in admitting a copy:—*Held*, that this is a point proper to be decided by the Judge of First Instance, and depending very much on his discretion, and that his decision should not be overruled except in a very clear case of miscarriage. SRIMATI RANI HURIPRIA *v.* RUKMINI DEBI - - - - xix. 79

II. PRACTICE—IN COURTS OF FIRST INSTANCE —*continued.*

27. —— *Fraud—Particulars of Fraud must be stated in Plaint—Code of Civil Procedure, s.* 53.] Where fraud is the ground of action, the particulars thereof must be set forth in the plaint, which otherwise should be ordered under sect. 53 of the Civil Procedure Code to be amended or rejected.—The use of such general words as "fraud" or "collusion" are ineffectual to give a fraudulent colour to the particular statements of fact in the plaint unless those statements taken by themselves are such as to imply that a fraud has actually been committed.—*Wallingford* v. *Mutual Society* (5 Ap. Ca. 697) followed. GUNGA NARAIN GUPTA *v.* TILUCKRAM CHOWDHRY - - - - xv. 119

28. —— *Books of Account.*] Where a Plaintiff rested his case upon a bond executed by the Defendant and upon the recitals contained therein, and the Defendant called for the Plaintiff's books and sought to shew from them that a portion of the moneys covered by the bond had not been advanced:—*Held*, that the books must be admitted *in toto*, and that those items which made in favour of the Plaintiff could not be rejected for want of corroboration. MUSSAMAT RAJESWARI KUAR *v.* RAI BAL KRISHAN xiv. 142

29. —— *Evidence.*] In a suit for an account of sales of timber by the Defendant on behalf of the Plaintiff, *held*, on the evidence that the Plaintiff had failed to prove the contracts upon which she sued.—*Quære*, whether a set-off could be pleaded against such a claim, but no issue having been raised or applied for in regard to it, the cross appeal was dismissed. NAN KARAY PHAW *v.* KO HTAW AH - - - xiii. 48

30. —— *Attachment.*] The appointment of a Surburakar, or manager, by a Court, does not supersede an attachment. BUNWAREE LALL SAHOO *v.* MOHABEER PROSHAD SINGH - i. 89

31. —— *Suit by Sebaits — Parties — Non-joinder.*] In a suit by three out of four joint sebaits of a certain family endowment to set aside an alienation of the endowed property made by the fourth sebait, under which the Defendants claimed, and to recover possession of the same as debutter:—*Held*, that the fourth sebait was a necessary party to the suit, and that as he had not been made either Plaintiff or Defendant it must be dismissed. The objection of non-joinder was not one of form only, the Plaintiffs deliberately abstained from making him a party, and under the circumstances complete justice could not be done in his absence. RAJENDRONATH DUTT *v.* SHAIK MAHOMED LAL - - - viii. 135

32. —— *Judge's private Knowledge.*] A Judge cannot without giving evidence as a witness import into a case his own knowledge of particular facts. The rule that a Court intending to call for fresh evidence should record its reasons for doing so, should be strictly adhered to. HURPURSHAD *v.* SHEO DYAL - - - iii. 259

33. —— *Judgment, Object of—Judgment should*

II. PRACTICE—IN COURTS OF FIRST INSTANCE —*continued.*

Dispose of Issue as Framed.] The proper object of a judgment is to support by the most cogent reasons that suggest themselves the final conclusion at which the Judge has conscientiously arrived. That object is defeated by the Judge elaborately recording the fluctuations of his mind from day to day in reference to the witnesses, the evidence, and the arguments. It is a substantial objection to a judgment that it does not dispose of the question as it was presented by the parties, *e.g.*, when it finds a particular signature to be a forgery which both sides admit to be genuine. SRI RAGHUNADHA *v.* SRI BROZO KISHORO - - - - - - iii. 154

III. PRACTICE—COSTS.

34. —— *Costs of Suit—Costs of Interlocutory Order—Set-off in Costs.*] It is not the practice when costs of an interlocutory proceeding have been disposed of, to consider that an award of the general costs of the suit interferes with the order disposing of those partial costs.—Where by an order of remand by the High Court in 1869 the Respondents had been ordered to pay costs in both Courts to the Appellant, and subsequently the Appellant's suit was dismissed by the High Court in 1874 and the Appellant ordered to pay the costs of the suit generally, the order of 1869 not being under review or rehearing or brought to the notice of the Court:—*Held*, that it was neither the intention nor the effect of the order of 1874 to override that of 1869, and that the Appellant was entitled to set off the costs properly recoverable by him under the earlier order against those due by him under the later one. RADHA PERSHAD SINGH *v.* RAM PURMESWAR SINGH - - - - - - x. 113

35. —— *Evidence—Costs.*] Case in which evidence is discussed and its true effect pointed out, and in which it is *held*, reversing a decree of the High Court, that an ikrarnamah relied upon by the Respondents was fabricated. It was connected with other documents already found to be forgeries, its contents did not dispel suspicion, it was not established by credible witnesses, nor supported by evidence of possession under it. No order made as to costs, fabricated documents having also been put forward on behalf of the Appellant. COOMARI RODESHWAR *v.* MANROOP KOER - - - xiii. 20

IV. PRACTICE—INTEREST.

36. —— *Interest on Costs—Duty of Court Executing Decree.*] Where an order of the Judicial Committee is silent as to interest upon the costs decreed, the Judge of the lower Court which has to execute the decree has no power to direct payment of those costs with interest.—The existing practice of the Indian Courts not to give in execution interest on costs unless specially decreed, or unless submission is made by the parties to the discretion of the Court, approved. FORESTER *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL - - - - - - iv. 137

37. —— *Interest on Decree.*] Interest upon a decree cannot be levied in execution where the decree is silent as to subsequent interest on the amount decreed; but may be recovered by a fresh action instituted for that purpose.—*Pillai* v. *Pillai* (Law Rep. 2 Ind. Ap. 219) approved. SETH GOKULDAS GOPULDASS *v.* MURLI AND ZALIM [v. 78

IV. PRACTICE—INTEREST—*continued.*

38. —— *Interest on Mesne Profits.*] Interest on mesne profits may be awarded as of course from date of suit in a decree.—Although such interest may be given from a date prior to the suit, their Lordships, under the circumstances of this case, including an unexplained delay in prosecuting the appeal, directed that the interest should run only from date of suit. HURROPERSAUD ROY CHOWDHRY *v.* SHAMAPERSAUD ROY CHOWDHRY [v. 31

39. —— *Interest on Mesne Profits.*] There being no rule of law obliging the Court to allow interest upon mesne profits, the discretion of the lower Courts in refusing interest was not interfered with. KISHNA NAND *v.* KUNWAR PARTAB NARAIN SINGH - - - - xi. 88

V. PRACTICE—IN COURTS OF APPEAL.

40. —— *Practice in Appeals—New Issue cannot be taken in Appeal.*] Where Plaintiff's title to sue was treated in the Courts below as dependent upon the issue whether her deceased husband and the Defendant's deceased husband (sons of the same father) were sapindas of each other; and the Courts found that the Plaintiff's husband was illegitimate, and, therefore, not a sapinda of his brother, and on that ground dismissed the suit:—*Held*, that assuming the Plaintiff to be entitled to avail herself of a finding by the High Court in another suit that the Defendant's husband was also illegitimate, she could not be allowed to raise in appeal the contention totally different from those which were heard and determined in the Courts below—viz., that two brothers can inherit from one another because they are equal in point of illegitimacy.—*Sreemutty Dossee* v. *Ranee Lalunmonee* (12 Moore's Ind. Ap. Ca. 470) followed. GAJAPATI RADIKA *v.* VASUDEVA SANTA SINGARO - - - - - xix. 179

41. —— *New Issue in Appeal.*] Terms on which a fresh issue to try principal question of fact will be granted. OOOLAGAPPA CHETTY *v.* ARBUTHNOT - - - - i. 268

42. —— *New Objections to Report in Appeal —Act VIII. of* 1859, *s.* 181.] Where a report, or supplemental report, has been made by Commissioners, to whom accounts have been referred for investigation under Act VIII. of 1859, sect. 181, the Privy Council will not entertain any objections thereto which have neither been brought to the notice of the First Court nor made in any of the grounds of appeal in the Courts in *India*. SETHS GUJMULL, JEITHMULL, AND THANMULL *v.* MUSSUMAT CHAHEE KOWAR - ii. 34

43. —— *New Issue in Appeal as to Title.*] A Plaintiff who has alleged and failed to prove a title as heir to an invalidly adopted son cannot in appeal set up a totally new case as heir to the alleged adoptive father. GOPEE LALL *v.* MISSAMUT SREE CHUNDRAOOLLEE BUHOOJEE Supp. 131

44. —— *New Plaint cannot be directed to be Filed—Leave to withdraw Suit.*] Where the Court of Appeal sets aside the whole of the previous proceedings in a suit, it cannot direct a new and amended plaint to be filed, but must

V. PRACTICE—IN COURTS OF APPEAL—*contd.*

give the plaintiff the alternative of having his suit dismissed, or of withdrawing it with leave to bring a new action. LEDGARD *v.* BULL [xiii. 134

VI. PRACTICE—SECURITY IN APPEAL.

45. —— *Security in Appeal—Extension of Time—Act X. of 1877, s. 602.*] Act X. of 1877, s. 602, with regard to extending time for giving security in appeal, is directory only, and although not to be departed from without cogent reason, *held*, that the Judicial Commissioner exercised a sound discretion in doing so when delay had been satisfactorily accounted for. BURJORE AND BHAWANI PERSHAD *v.* MUSSUMAT BHAGANA xi. 7

46. —— *Security in Appeal—Restoration of Appeal on Security being given—Act X. of 1877, ss 549, 556, 557, 558.*] An appeal to the High Court having been struck off because security had not been filed, the Appellant, after obtaining leave, tendered security and prayed for the restoration of the appeal, but the High Court held that a petition to that effect was not entertainable under sect. 558 of the Code of 1877, since the order of dismissal had been made under sect. 549 and not under sects. 556 or 557:—*Held*, that on security being given the appeal should be restored. KUAR BALWANT SINGH *v.* KUAR DOLUT SINGH - - - xiii. 57

47. —— *Act X. of 1877, s. 547—Security in Appeal—Extension of Time.*] Where the High Court has ordered security for costs to be given by an Appellant, it has power under sect. 549 of the Civil Procedure Code to enlarge the prescribed time for so doing on application made either before or after such time has elapsed. If ultimately the security is not furnished, the Court may reject the appeal.—*Haidri Bai* v. *East Indian Railway Company* (Ind. L. R. 1 Allahab. 688) overruled. BUDRI NARAIN *v.* MUSSUMMAT SHEO KOER - - - - xvii. 1

48. —— *Security in Appeal—Extension of Time—Act X. of 1877, s. 549.*] Where the High Court had ordered security to be given by an Appellant, and had heard and refused an application for extension of time for giving the same, their Lordships under the circumstances of the case declined to interfere with such exercise of discretion, and held that the appeal was properly dismissed under sect 549 Civil Procedure Code. MOHUNT MODHUSUDAN DAS *v.* KRISHNA PRAPANNA RAMANING DAS - - - - xvii. 9

VII. PRACTICE—VICE-ADMIRALTY COURT.

49. —— *Vice-Admiralty Courts, Appeals from—Rule 35 under 2 Will. 4, cl. 51—Petition of Appeal.*] By the 35th Rule ordained by the King in Council in pursuance of 2 Will. 4, cl. 51, all appeals from the Vice-Admiralty Court are to be asserted within fifteen days after the date of the decree. A similar provision was contained in the old rules of the Admiralty Court.—The words "after the date of decree," mean after the date when the decree is pronounced, not the date when the decree is reduced to writing and signed. —Where the Appellants allowed the fifteen days to expire, summoned the Respondents before the Registrar, and appeared without protest to the Respondent's summons to assess damages, *held*, on motion to that effect, that their petition of appeal must be set aside with costs both of the motion and of appeal. THE "BRENHILDA" *v.* BRITISH INDIA STEAM NAVIGATION COMPANY [viii 159

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See HINDU LAW. 34.

—— - - - iii. 259; xi. 51; xx. 77
See OUDH LAW. 10, 16, 18.

PRINCIPAL AND AGENT—*Custom—Evidence of Agent's Authority—Araths—Panris.*] In a suit to recover Rs.14,000, which the Plaintiffs alleged that they had paid as guarantors of the Defendant, being the loss sustained by his vendors in consequence of the fall of the price of certain cotton sold, it appeared that, by a local custom, the Defendant, as a stranger in the locality of *N.*, could only trade through a resident merchant, the name of whom is by the custom entered as principal in the transaction, to whom the credit is given, and with whom the final settlement of the transaction is effected as the "arath" of such stranger; that the Defendant made extensive transactions in *N.* through the Plaintiffs, representing them as his "araths," and delivered to them "panris," or memoranda of the transactions, according to the custom: that in respect of the transaction in question the Defendant did not deliver a panri to the Plaintiffs (though he had made use of their names), and that the Plaintiffs had represented to the vendors that, not holding a panri, they could not render themselves responsible, but that on reference to a punchait, it was decided that the Plaintiffs ought to pay, and they did pay, the said Rs.14,000 to the vendors:—*Held*, that the Defendant was liable. He had the authority of the Plaintiffs to use their name, had so used it

PRINCIPAL AND AGENT—*continued.*

with their concurrence, and had thereby authorized the payment as aforesaid by the Plaintiffs, who according to the custom were undoubtedly liable to the vendors. SAMEER MULL AND CHUNDER MULL *v.* CHOGALALL - - vi. 238

2. —— *Forgery by Agent—Agent's Misappropriation and False Accounts.*] The Defendant, as Sudder treasurer, gave to the Government the following engagement in respect of its darogah of stamps appointed as his agent: "Should any loss or deficiency arise from the non-production of accounts, or by misconduct or negligence, ... I hold myself responsible to make good such loss." —It appeared that the darogah, in collusion with the licensed vendors of stamps, forged stamps and accounted for their proceeds to the Government, while he misappropriated the proceeds of an equivalent amount of genuine stamps entrusted to him by the Treasury:—*Held*, that, although the Defendant was not responsible in respect of the forgery committed, yet he was so for the misappropriation and false accounts of his agent; and that the losses, which in the first instance were caused by the forgery, were brought within the scope of the agreement by reason of the misappropriation and the false accounts. SRI KISHEN *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL - - - - xii. 142

3. —— *Plaint—Limitation—Decree for Account.*] Where a plaint alleged a continued agency in the Defendant and prayed for relief on the ground that there was a specific balance against him, and prayed for the recovery of such sum or any larger sum that might be proved to be payable:—*Held*, that such suit was essentially one for an account; that limitation under Act IX. of 1871 runs from the date on which the agency ceased; that the Court following the general rule ought not to make a final decree at the hearing, but should order an account to be taken of such agent's dealings with the Plaintiff's money.—Where a Defendant instead of submitting to an account falsely denies his receipts, his fiduciary position, and his accountability *in toto*, *held*, that he should be directed to pay the whole costs of the suit, independently of the result of the account. HURRONATH ROY BAHADOOR *v.* KRISHNA COOMAR BUKSHI - - xiii. 123

4. —— *Moneys Received by Agent—Account.*] In a suit to enforce a charge on the estate of the deceased for moneys advanced by the Plaintiff to pay Government revenue, maintenance of the widow and deb-sheba, *held*, that he was bound to give credit for moneys received by his agent as ijara rent thereof, such moneys having been under his control and applicable to the reduction of debt for which the estate was liable.—*Hunoomanpershad Pandy* v. *Mussumat Babooee, Munraj Koonweree* (6 Moore's Ind. Ap. Ca. 393) followed.—Where a widow has borrowed under necessity, the stipulated rate of interest may be reduced if it was unreasonable for the lender to suppose that she could not have borrowed at a lower rate under the circumstances. RAJAH HURRONATH ROY BAHADOOR *v.* RUNDHIR SINGH [xviii. 1

5. —— *Plaint—Authority to Sue.*] Where a landowner's agent sued to recover arrears of rent, and afterwards, on objection taken to his authority, obtained an order of Court amending the plaint by substituting the name of his principal:—*Held*, that on failure to prove his authority to sue, the suit was rightly dismissed, and that the order amending the plaint was not a decision as to the authority in question. NAM NARAIN SINGH *v.* ROGHUNATH SAHAI - - - xix. 135

6. —— *Account—Onus Probandi.*] Where an account has been directed of such moneys as the Defendants' manager, found to have been imprudent and dishonest, would have been justified in borrowing in the course of a prudent management of his estate, *held*, that the *onus* is on the creditor to shew that each advance is within the above terms, and is not discharged by proof that the money borrowed was partly used in payment of Government revenue without proof that the rents were insufficient for that purpose. RAJAH PARTAB BAHADUR SINGH *v.* RAJAH CHITPAL SINGH [xix. 33

7. —— *Liability of Principal—Scope of Agent's Authority.*] A principal is answerable for the act of his agent in the course of his master's business and for his master's benefit, and for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit. Though the master may not have authorized the act, if he has put the agent in his place to do a particular class of acts he must be answerable for the manner in which that agent has conducted himself in doing the business which it was the act of his master to place him in. BURMAH TRADING CORPORATION *v.* MIRZA MAHOMED ALLY SHERAZEE v. 130

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See LIMITATION. 14.

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See FRAUD. 2.

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See DAMAGES. 1.

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See POWER OF ATTORNEY.

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See ONUS PROBANDI. 2.

PRINCIPAL AND BANIAN—*Banian—Lien of Banian—Custom—Stoppage in transitu.*] Where a banian claimed against the consignors of his principal a lien on the consignors' goods in the principal's godowns, and also on goods on board ship which the consignors claimed to stop *in transitu*:—*Held*, that the banian had no lien even against his principal either by law or custom, that the evidence failed to prove an oral agreement to that effect, and that no course of dealing was proved from which such agreement could be inferred. Consequently he had no lien against the consignors.—Where sales of goods consigned have been in good faith effected by a banian, and the proceeds have been duly brought into account between him and his employers; *held*, that the consignors of such goods cannot afterwards hold the banian accountable to them in respect thereof. PEACOCK *v.* BYJNAUTH. GRAHAM *v.* BYJNAUTH [xviii. 78

PRINCIPAL AND SURETY—*Surety—Lex loci Contractûs—Contract with Independent State.*] In a suit to recover moneys which the Plaintiff had been compelled to pay upon the Defendants' breach of contract with the independent State of *Bhawalpur*, the Defendants pleaded that there had been no breach within the meaning of the contract of suretyship. It appeared that the whole arrangement had been made within the State of *Bhawalpur*, the authorities of which had put an end to the contract and enforced payment by the Plaintiff:—*Held*, that the parties must be considered to have contracted according to the liabilities that would be incurred at *Bhawalpur*, and not with a view to the law of *British India*, and that the Plaintiff was entitled to recover. SIRDAR SUJAN SINGH *v.* GANGA RAM - ix. 58

PRIORITY AMONGST SAPINDAS - vii. 212
See HINDU LAW. 84.

PRIVITY OF CONTRACT - - iv. 23
See CHAMPERTY. 2.

PROBATE - - - x. 80; xviii. 132
See WILLS. 6, 7.

PROCEDURE BY ROAD CESS AUTHORITIES [xx. 70
See SALE FOR ARREARS OF REVENUE. 4.

PROCEDURE IN EXECUTION - - iv. 66
See EXECUTION OF DECREE. 4.

PROCEDURE IN REGISTRATION CASES
See REGISTRATION. 6. [iii. 221

PROCEEDING TO ENFORCE DECREE OBTAINED BEFORE LIMITATION ACT APPLIED - - - iv. 127
See LIMITATION. 17.

PROCEEDINGS TO ENFORCE A DECREE IN A COURT WITHOUT JURISDICTION
See LIMITATION. 16. [vii. 167

PROCLAMATION OF CONFISCATION.
See OUDH LAW. 1—3.

PROFESSION OF FAITH - - xvii. 73
See MAHOMEDAN LAW. 17.

PROMISSORY NOTE—*Indorser—Securities for Promissory Note.*] An indorser of a promissory note who pays the holder of it is entitled to the benefit of the securities given by the maker of it which the holder has in his hands at the time of the payment, and upon which he has no claim except for the note itself.—*Duncan, Fox & Co.* v. *North and South Wales Bank* (6 App. Cas. 1) followed:—*Held*, further, on the evidence in this case, that the owner of the securities had authorized their transfer by the holder to the Appellant on receiving payment. AGA AHMED ISPAHANY *v.* JUDITH EMMA CRISP - xix. 24

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See EVIDENCE. 10.

PROMPT DOWER - Supp. 135; ii. 235
See MAHOMEDAN LAW. 8, 9.

PROOF OF CUSTOM - - - iii. 259
See CUSTOM.

PUBLICATION OF NOTICES OF SALE x. 19
See SALES FOR ARREARS OF REVENUE. 7.

PURCHASE BY DECREE-HOLDER - xv. 12
See EXECUTION SALES. 10.

PURCHASE BY TRUSTEE - - ii. 18
See TRUSTS. 1.

PURCHASE OF CONTINGENT INTEREST WHICH FAILS - - ii. 131
See EXECUTION OF DECREE. 1.

PURCHASE WITH JOINT FUNDS - vi. 233
See HINDU LAW. 32.

PURCHASER - - xiv. 77, 84; xvii. 194
See HINDU LAW. 45, 46, 33.

PURCHASER AT EXECUTION SALE i. 321; [v. 116; xix. 154; xiii. 106
See EXECUTION SALES. 1, 3, 13, 16.

PURCHASER AT EXECUTION SALE OF ANCESTRAL ESTATE - - xiii. 1
See HINDU LAW. 44.

PURCHASER AT EXECUTION SALE OF FATHER'S SHARE - - xi. 26
See HINDU LAW. 43.

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See HINDU LAW. 41.

PURCHASER ENTITLED TO PARTITION xi. 26
See PRACTICE. 22.

PURCHASER FROM HINDU WIDOW viii. 210
See LIMITATION. 27.

PURCHASER FROM SATISFIED MORTGAGEE WITHOUT NOTICE OF MORTGAGOR'S TITLE - - - - ii. 48
See LIMITATION. 13.

PURCHASER OF EQUITY OF REDEMPTION
See MORTGAGOR. 2. [xi. 126

PURCHASER PENDENTE LITE - xv. 97
See RES JUDICATA. 9.

PURCHASER WITH NOTICE OF SON'S RIGHTS
See HINDU LAW. 42. [vi. 88

PURDANASHIN i. 192; viii. 39; xviii. 144
See ONUS PROBANDI. 1, 2, 4.

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See REGISTRATION. 7.

PUTNEE TENURE—*Land Tenure*—"*Putnee Talook*"—*Sale for Arrears of Rent.*] Under the description "putnee talook," it must be *primâ facie* intended that the tenure called a putnee tenure was a tenure transferable by sale, and upon the creation of which it was stipulated by the terms of the engagement interchanged that in case of an arrear occurring, the estate might be brought to sale free from incumbrances. According to the effect of Act X. of 1859, s. 105, Reg. VIII. of 1819, ss. 8 and 11, and probably also of Reg. I. of 1820, the effect of the sale of such a talook for arrears of rent is to destroy all incumbrances which have been created by the putneedar, *e.g.* a durputnee tenure. BRINDABUN CHUNDER SIRCAR CHOWDHRY *v.* BRINDABUN CHUNDER DEY CHOWDHRY - - - i. 178

PUTRA POUTRÁDI KRAME - - viii. 46
See HINDU LAW. 110.

RATE OF INTEREST - - - xii. 47
See GUARDIAN. 3.

—— - - - - xviii. 1; xvii. 201
See HINDU LAW. 95.
MAHOMEDAN LAW. 6.

RATIFICATION—*Acquiescence—Laches.*] *Held*, that the Plaintiffs having allowed twenty years to elapse after attaining their majority without taking any steps to set aside a solehnamah which the evidence shewed had been acted upon whereby their mother purported to convey away their shares in their father's estate, it was too late for them to question the validity of the transaction on the ground either of the mother having had no power to convey or of the solehnamah having been prejudicial to their interest. Independently of the law of limitation, such lapse of time is evidence of ratification. MOULVI ABU MAHOMED KADER *v.* SRIMATI AMTAL KARIM BANU xv. 229

2. —— *Act VI. of* 1876—*Contract by Disqualified Proprietor.*] The Respondent, being subject to Act VI. of 1876 and thereby placed under legal disability, contracted to lease and mortgage his ancestral zemindary to the Appellant. Thereafter his estate was, whether rightly or wrongly, ordered to be released, and the Respondent, being then *sui juris*, carried on the transaction, retaining the benefit of the Appellant's payments, and exacting from him the fulfilment of his stipulations:—*Held*, that the Respondent was bound by the contract, though its terms were to be ascertained by what passed when he was disabled from contracting:—*Held*, further, that a suit for specific performance was the Appellant's proper remedy. Even if the contract was against the policy of the Act, the order of release was made with jurisdiction, was not open to review and enabled the Respondent to ratify the contract. GREGSON *v.* RAJAH SRI SRI ADITYA DEB - - xvi. 221

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See REGISTRATION. 9.

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See HINDU LAW. 3.

RATIFICATION AFTER PUBERTY Supp. 192

See MAHOMEDAN LAW. 16.

RATIFICATION BY COMPANY - iv. 86

See DIRECTORS OF COMPANY.

REASONABLE DOWER - - xx. 144

See MAHOMEDAN LAW. 10.

RECITAL IN DEED - - - xvii. 145

See EVIDENCE. 6.

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See DEEDS. 1.

REDEMPTION - - - - xvii. 201

See MORTGAGOR. 5.

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See OUDH LAW. 30.

REFUND OF MESNE PROFITS TO ZEMINDAR AND GHATWAL - - Supp. 181

See GHATWALI TENURES. 1.

REFUND OF PURCHASE-MONEY CLAIMED

See EXECUTION OF DECREE. 1. [ii. 131

REFUSAL TO FILE AWARD - xviii. 73

See ARBITRATION. 3.

REGISTER OF MAHOMEDAN MARRIAGE

See EVIDENCE. 7. [xix. 157

REGISTRAR'S DUTIES - - - ii. 211

See REGISTRATION. 2.

REGISTRATION—*Act XX. of* 1866, *s.* 17—*Admissibility of Unregistered Document*—*Madras* **REGISTRATION**—*continued.*

Act VIII. of 1865, *s.* 3.] A document professing to be a lease, but unregistered, was granted by a zemindar to the Defendant's father, its terms being "In consideration of the assistance you have rendered to the zemindary, you requested that village *A.* should be leased to you for forty years, fixing a favourable poruppu. The said village," found to be of the value of Rs.1700 per annum, "has been accordingly leased to you for forty years at Rs.400 per annum. You shall therefore raise the required crop and enjoy; and agreeably to the kararnama you have given, you should continue to pay the fixed poruppu according to the instalments of kist year after year":—*Held*, that this document is not a puttah within sect. 3 of *Madras* Act VIII. of 1865, and not being excluded from the operation of Act XX. of 1866, sect. 17, was inadmissible in evidence and did not affect the estate.—Sect. 3 was not intended to apply to all cases of persons holding under others, but directs that where there is an existing relation of landlord and tenant, the landlord shall in that case grant a puttah to his tenant. RAMASAWMI CHETTI *v.* THE COLLECTOR OF MADURA - - - - - vi. 170

2. —— *Act XX. of* 1866, *s.* 36—*Registrar's Duties—Registration Valid though Irregular.*] A deed of sale executed on the 10th of July, 1868, was presented by the purchaser for registration on the 22nd of October, 1868, accepted, and on the 10th of November, 1868, in fact registered, the registering officer irregularly satisfying himself, in the absence of the vendors, of the due execution of the deed by them. After certain proceedings, in which the deed was held by the District and High Courts to be an unregistered deed, and in which the High Court directed its due registration, the deed was again registered on the 16th and 25th of May and the 5th of June, 1871:—*Held*, that this latter registration, although the High Court had no jurisdiction to order it, was in time and valid. No time is fixed by the statute within which the registration of a deed presented and accepted for registration within four months from its execution must be completed.—*Semble*, with regard to the former registration, although a registrar acts in contravention of sect. 36 of the *Registration Act* of 1866, if he registers a deed of sale without the vendors having appeared before him, it does not follow that the registration is thereby rendered null and void. SAH MUKHUN LALL PANDAY *v.* SAH KOONDUN LALL - ii. 211

3. —— *Act XX. of* 1866, *s.* 52—*Decree on Specially Registered Bond—Execution Limitation—Act XIV. of* 1859, *s.* 22—*Estoppel—Indian Evidence Act*, 1872, *s.* 115.] A decree obtained under Act XX. of 1866 on a specially registered bond is (see sect. 52) a summary decision:—*Held*, that such a decree obtained on the 9th of July, 1867, was governed as regards limitation by Act XIV. of 1859, sect. 22, which provides a period of one year, and therefore, that a first application for execution in May, 1870, was barred.—Petitions by a judgment debtor to postpone a sale in execution, which contain no admission that the decree can be legally executed, are not within the description of an estoppel given in the *Indian*

Evidence Act, 1872, sect. 115 *et seq.*, and such petitioner is not estopped from insisting that execution is barred. MINA KONWARI *v.* JUGGUT SETANI - - - - - x. 119

4. —— *Act VIII. of* 1871, *s.* 28.] Sect. 28 of Act VIII. of 1871 is satisfied by registration being effected in the place where any portion of the registered property is situated. It is not necessary that such portion should be a substantial one. HARI RAM *v.* SHEODIAL RAM [xvi. 12

5. —— *Act VIII. of* 1871, *s.* 35—*Admissibility of Registered Document—Certificate of Registration.*] A deed of sale, purporting to have been made by a Mahomedan woman and her two sons, relating to their separate shares in certain immoveable property, was presented for registration; the two sons admitting the execution thereof by themselves, but denying that by their mother, and objecting to have it registered. The deed, however, was registered by the sub-registrar, but the High Court held improperly so, having regard to Act VIII. of 1871, s. 35, and that therefore the same could not be received in evidence against the sons:—*Held*, that, according to the true construction of sect. 35, the registering officer must refuse to register a document *quoad* the persons denying the execution thereof, and *quoad* any person who appears to be a minor, an idiot, or a lunatic; but the section must not be extended so as to destroy the operation of a deed as regards those who admit the execution thereof, or who are under no disability. A certificate of registration is sufficient to render a document admissible in evidence, without inquiry as to whether the same was properly granted.—*Sah Mukhun Lall Panday* v. *Sah Koondun Lall* (Law Rep. 2 Ind. Ap. 210), approved. MOHAMMED EWAZ *v.* BIRJ LALL - iv. 166

6. —— *Act VIII. of* 1871, *s.* 73—*Application to compel Registration—Procedure in Registration Cases.*] On the 5th of January, 1872, at the registrar's office at *Gya*, a deed of gift purporting to have been executed on the 19th of November, 1871, by a Mahomedan (since deceased) in favour of her grandchildren, was presented for registration by the Appellant, as the father and guardian of the donees. The Respondents, heirs-at-law of the alleged donor, came in and denied the execution of the deed; and registration was accordingly refused. — Thereupon the Appellant applied under sect. 73 of the *Indian Registration Act* of 1871 to the zillah Judge for an order upon the registrar to register the deed. The application was refused; but within ninety days an order of review was made by the Judge's successor, under sects. 370 and 378 of Act VIII. of 1859; which order was subsequently set aside by the High Court in its extraordinary jurisdiction, as made *ultra vires* and without jurisdiction:—*Held*, that this order of the High Court must be reversed. Under sect. 38 of Act XXIII. of 1861, the whole procedure of Act VIII. of 1859, including the power of admitting to review, is made applicable to a proceeding to compel registration under the *Registration Act*. Even if the order admitting the review was not in strict accordance with sects. 376 and 378 of Act VIII., it could not be

quashed as one made wholly without jurisdiction. —Although districts and sub-districts may be appointed by the Government for the purpose of registration under the *Registration Act*; yet the District Courts mentioned therein must be taken in the case of a regulation province to import the ordinary zillah Courts, and therefore to be subject to the superintendence of the High Court. REASUT HOSSEIN *v.* HADJEE ABDOOLLAH iii. 221

7. —— *Purdanashin.*] Where the sole objection to the validity of the registration of a grant of a village was that the grantor did not personally attend at the office of the registrar, but that the latter attended at the house of the grantor (a purdanashin), and there received the deed, a copy, and her acknowledgment of its execution:—*Held*, that the registration was effective. MAJID HOSAIN *v.* MUSSAMAT FAZL-UN-NISSA [xvi. 19

8. —— *Act III. of* 1877, *s.* 17, *cl.* (*b*) *and* (*h*) —*Agreement to sign Kabuliyat.*] Where tenants executed a kabuliyat containing conditions that khas possession might be resumed at will or if rents were not paid at the end of a year, on a representation to the effect that such conditions would not be enforced:—*Held*, that the kabuliyat did not express the real agreement between the parties, and could not be sued upon.—*Held*, that an ikrar to the effect that the tenants will sign and have registered kabuliyats at rents expressed in the ikrar is not a document inadmissible for want of registration under Act III. of 1877, sect. 17, clause (b), as operating to create or declare an interest. It comes under clause (h) by creating a right to obtain another document, which when executed will create or declare an interest.—Under sects. 584 and 585 of Civil Code Procedure, 1882, an Appellant must not be allowed in second appeal to question the finding of the first appellate Court upon a matter of fact. PERTAB CHUNDER GHOSE *v.* MOHENDRA PURKAIT [xvi. 233

9. —— *Act III. of* 1877, *s.* 49—*Ratification.*] Where a deed of conveyance, executed in 1873, but unregistered, was inadmissible in evidence under sect. 49 of Act III. of 1877, *held*, that a registered deed of conveyance, executed in 1878, and confirming the unregistered deed of 1873, operated to pass the property.—The grantee under that deed having paid the consideration money, and being shewn to be the true owner, the High Court was wrong in holding that his son, having been allowed to be in possession, with or without payment of rent, must be treated as owner, or that otherwise the provisions of the Registration Act would be defeated. MITCHELL *v.* MATHURA DASS - - - xii. 150

—— - - - xi. 121; xvi. 53; xvii. 82

See OUDH LAW. 20, 25, 21.

RE-GRANTS.

See Cases collected under OUDH LAW.

REGULATIONS.

—— Reg. VIII. of 1793, s. 51 - - ii. 193

See ENHANCEMENT. 2.

—— —— ss. 54, 55, 61 - - xvi. 152

See ABWAB.

REGULATIONS—*continued.*

—— Reg. X. of 1793, s. 33 - - iii. 72
See HINDU LAW. 14.

—— Reg. XLIV. of 1793, s. 7 - - ii. 193
See ENHANCEMENT. 2.

—— Reg. XLIV. of 1793 - - Supp. 181
See GHATWALI TENURES. 1.

—— Reg. XXXIV. of 1803, ss. 9, 10 - vii. 51
See MORTGAGEE. 3.

—— Reg. XVII. of 1806, s. 8 - - v. 18; [xi. 186; xiii. 113
See MORTGAGEE. 5, 6, 7.

—— Reg. XX. of 1812, s. 2, cl. 15 - ii. 87
See EVIDENCE. 8.
See MAHOMEDAN LAW. 1.

—— Reg. XXIX. of 1814 - - ix. 104
See GHATWALI TENURES. 2.

—— Reg. VIII. of 1819, s. 8, cl. 2 ii. 71; x. 19; [xiv. 30; xix. 191
See SALES FOR ARREARS OF REVENUE. 6, 7, 8, 9.

—— —— ss. 8 and 11 - - - i. 178
See PUTNEE TENURE.

—— Reg. I. of 1824, s. 9, cl. 11 - viii. 172
See SALT DEPARTMENT.

—— Reg. XI. of 1825 - - - vii. 73
See ACCRETION. 5.

—— —— s. 2, and s. 4, cl. 1 - - vi. 211
See ACCRETION. 2.

—— Madras Reg. XXV. of 1802 - xvii. 134
See HINDU LAW. 59.

—— —— s. 2 - - - - i. 282
See POLLIEMS. 2.

—— —— s. 3 - - - - xiii. 32
See INAMDARS. 1.

—— Madras Reg. XXXI. of 1802 - i. 282
See POLLIEMS. 2.

—— Madras Reg. VII. of 1817 - - i. 209
See RELIGIOUS ENDOWMENTS. 1.

REHEARING OF APPEAL BY PRIVY COUNCIL [xiii. 155; v. 171
See PRACTICE. 13, 14.

RELEVANT CASE OF NEW MATTER xiii. 155
See PRACTICE. 13.

RELIGIOUS CEREMONIAL - - xviii. 59
See MAHOMEDAN LAW. 18.

RELIGIOUS ENDOWMENTS—*Custom—Superintendence of Religious Endowments—Madras Reg. VII. of* 1817.] The important principle to be observed by the Courts in dealing with the constitution and rules of religious brotherhoods attached to Hindu temples is to ascertain, if possible, the special laws and usages governing the particular community whose affairs have become the subject of litigation, and to be guided by them. The custom and practice in such matters is to be proved by testimony.—A zemindar claiming a customary right to grant confirmation of the election of a mohunt must prove the custom.—An acknowledgment, taken in troubled times from the guardian of an infant mohunt, of a zemindar's customary right to control and remove the mohunt, is entitled to little, if any, weight as evidence of the custom.—The superintending authority over religious endowments exercised by the old rulers of the country passed to the British Government; and Reg. VII. of 1817, of the *Madras Presidency*, merely defined the manner in which that power was thenceforth to be exercised. RAJAH MUTTU RAMALINGA SETUPATI *v.* PERIANAYAGUM PILLAI [i. 209

2. —— *Decrees against Sebait—Dewuttur—Sebait's Powers as Manager—Attachment.*] The Respondent, on the 27th of February, 1852, and the 25th of July, 1854, obtained two decrees against the sebait of an idol upon his bonds for the repayment of moneys alleged therein to have been borrowed for the service of the idol and the expenses of the temple. Both decrees directed that the debt should be paid by the sebait personally, or else realized from the profits of the dewuttur lands.—In a suit by the Appellants as sebaits in succession to the judgment debtor to set aside the said decrees, and to have the dewuttur property released from attachment issued in execution thereof:—*Held*, that the decrees, being untainted by fraud or collusion, and having been passed after the necessary and proper issues had been raised and determined, are entitled to the force due to judgments of competent Courts, and are binding on the succeeding sebaits, who form a continuing representation of the idol's property.—Notwithstanding that property devoted to religious purposes is, as a rule, inalienable, it is competent for a sebait to incur debts and borrow money for the service of the idol and preservation of its property, to the extent to which there is an existing necessity for so doing, his power in that respect being analogous to that possessed by the manager for an infant heir. PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO [ii. 145

3. —— *Dewuttur—Justifying Necessity—Evidence of Dedication.*] In a suit to set aside certain alienations of an ancestral mehal on the ground that the mehal had been dedicated to the worship of an idol, the defence was (1) that the estate had not been so dedicated: (2) that if it were, there was legal necessity for the alienation.—The deeds of transfer contained recitals that the estate transferred was dewuttur, that the temple was out of repair, and that the purchase-money was wanted to restore it:—*Held* (1) on the evidence that the estate was not dewuttur; (2), that the admissions in the deeds must be taken as a whole, and according to them the sales were justifiable, even if the property were dewuttur; (3), that even if part only of the purchase-money was required for the repairs of the idol, or was represented to have been so required, and this was *bonâ fide* believed by the grantees, the deeds would not be wholly void, by reason that some of the money was raised for another purpose. KONWUR DOORGANATH ROY *v.* RAM CHUNDER SEN - - - - iv. 52

4. —— *Urallers—Pagoda—Uraima Right—Assignment of Trusteeship Invalid.*] An assignment from the persons known as the urallers of the *Tracharamana* pagoda and its subordinate chetroms to the Appellant of the uraima right, or right of management thereof, was *held* to be beyond the legal competence of the urallers, both under the common law of *India* and the usage of

RELIGIOUS ENDOWMENTS—*continued.*

the foundation. The assignment being of a trusteeship for the pecuniary advantage of the trustee, could not be validated by any proof of custom. RAJAH VURMAH VALIA *v.* RAVI VURMAH MUTHA [iv. 76

5. —— *Succession—Custom.*] Where, owing to the absence of documentary or other direct evidence, it does not appear what rule of succession has been laid down by the endower of a religious institution, it must be proved by evidence what is the usage. If the usage has not been proved to be according to the ordinary rules of inheritance a plaintiff cannot succeed under such rules. SRIMATI JANOKI DEBI *v.* SRI GOPAL ACHARJIA - - - - - x. 32

6. —— *Succession of Mohunts—Custom.*] With regard to the succession of mohunts, the only law to be observed is to be found in custom and practice, which must be proved.—Where the Plaintiff failed to prove that the deceased mohunt had the power to appoint his successor, and that the sect to which he belonged was bound to instal the disciple whom he had selected:—*Held*, that his suit must be dismissed. GENDA PURI *v.* CHHATAR PURI - xiii. 100

7. —— *Pagoda—Power of Judge—Committee of Pagoda.*] A right of appeal from the decision of a Judge must be given by statute or an equivalent authority.—Act XX. of 1863 having vested in the District Judge a discretionary authority under certain circumstances to fill up a vacancy in the committee of a pagoda:—*Held*, that neither sect. 10 of Act XX. nor sect. 540 of Act. X. of 1877 gave a right of appeal from the exercise of such authority.—The question of the High Court's jurisdiction not having been raised before that Court:—*Held*, that the right to raise it had not been waived. There was inherent incompetency in the High Court to deal with the question before it; and consent could not confer on the High Court a jurisdiction which it never possessed.—*Ledgard* v. *Bull* (Law Rep. 13 Ind. Ap. 134) followed. MEENAKSHI NAIDOO *v.* SUBRAMANIJA SASTRI - - - xiv. 160

8. —— *Sebaitship — Founder's Heirs — Succession.*] According to Hindu law, when the worship of a Thakoor has been founded, the sebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or that there has been some usage, course of dealing, or circumstances to shew a different mode of devolution:—*Held*, in this case, that the Plaintiff, as representative by primogeniture of the founder of the Bullav Acharjee community, was entitled, in preference to a cadet of the same family, to the sebaitship of a certain consecrated picture or idol, and as incident thereto to the things which have been offered to the idol.

It appearing that a temple had been granted to the idol on condition that the Defendant should be sebait: *held*, that the Plaintiff could not recover possession of such temple, though it had been in part created after the grant by the subscription of the worshippers, no evidence having been given that the subscribers did not know of the condition, or had paid their money

RELIGIOUS ENDOWMENTS—*continued.*

with any reference to the question of sebaitship. GOSSAMEE SREE GRUDHAREEJEE *v.* RUMANLOLLJEE GOSSAMEE - - - - - xvi. 137

- 9. —— *Dhurmakartah—Custom — Succession —Appointment.*] Where it was proved that the established usage of a religious foundation was that each dhurmakartah appointed whilst in office and shortly before his death as his successor an ascetic previously initiated by him:—*Held*, that the Appellant having been appointed not in good faith by a person who had ceased to be dhurmakartah, having been removed from his office by the Court for embezzlement, and being at the time subject to a charge of criminal breach of trust, was not the lawful dhurmakartah. RAMALINGAM PILLAI *v.* VYTHILINGAM PILLAI [xx. 150

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See HINDU LAW. 24.

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See EXECUTION SALES. 9.

REMAINDER - - - xi. 1

See WILLS. 2.

RENEWAL OF LEASE - - - v. 164

See OCCUPANCY RIGHTS. 1.

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See LEASE.

RENT CHARGE - - - - i. 34

See LIMITATION. 12.

RENT COURTS—*Jurisdiction—Transfer of Rent decrees for Execution—Act VIII. of* 1859, *s.* 284.] The Rent Courts established by Act X. of 1859 are Civil Courts within the meaning of Act VIII. of 1859, and under sect. 284 of Act VIII. a Collector can transfer his rent decrees for execution into another district. RAJAH NILMONI SINGH DEO BAHADOOR *v.* TARANATH MOOKERJEE [ix. 174

RES JUDICATA — *Judgment as to Validity of Will—Issue—Act VIII. of* 1859, *s.* 2—*Cause of Action.*] In a suit by a testator's adopted son and heir-at-law to obtain possession of the whole estate of the deceased, on the ground that both the inherited property and the property acquired from the income thereof were ancestral, and could not under the Mitakshara be disposed of by will, it was pleaded that it had been decided in a former suit between the same parties that the testator had the power to devise by will such real property as he had acquired out of the income of his ancestral property.—It appeared that in that former suit the Plaintiff sought to cancel various alienations by the testator; that the effect of the pleadings and of the memorandum of appeal therein was to put in issue *inter alia* whether the testator had power to make any of the devises of realty contained in the will; but that the only issue actually raised relating to the will was whether or not it had been assented to by the Plaintiff:—

Held, that notwithstanding that the said issue embraced but a portion of the controversy between the parties, inasmuch as it plainly appeared that the question of the validity of the whole will was raised by the parties and submitted to the Court

as above stated, the judgment thereon was binding.

The term "cause of action" in sect. 2 of Act VIII. of 1859 is to be construed with reference rather to the substance than to the form of action.—Sect. 2 does not prevent the operation of the general law relating to *res judicata*, which is, that when a question has been necessarily decided in effect, though not in express terms, between parties to the suit, they cannot raise the same question as between themselves in any other suit in any other form.—*Gregory* v. *Molesworth* (3 Atk. 626) approved. SOORJOMONEE DAYEE *v.* SUDDANUND MOHAPATTER - - Supp. 212

2. —— *Judgment as to Validity of Adoption—Material Issue—Cause of Action—Act VIII. of* 1859, *s.* 2.] In a suit against an adopted son and his mother to set aside the adoption, the defence was that in a suit by such son to set aside putnee leases granted by his adopted mother on the ground that she had thereby exceeded her power as the owner of a widow's estate, the Plaintiff had intervened, claiming as reversionary heir, and an issue as to the validity of the adoption had been thereafter decided against him:—*Held*, that the present suit was therefore barred.

Where a material issue has been tried and determined between the same parties in a proper suit, and in a competent Court, as to the *status* of one of them in relation to the other, it cannot be again tried in another suit between them.—The expression, "cause of action," in sect. 2 of Act VIII. of 1859, cannot be taken in its literal and most restricted sense; it is to be construed rather with reference to the substance than to the form of the action.—*Soorjomonee Dayee* v. *Suddanund Mohapatter* (Ind. App. Sup. 212) affirmed. KRISHNA BEHARI ROY *v.* BROJESWARI CHOWDRANEE - - - - - ii. 283

3. —— *Estoppel by Judgment—Parties—Issue—Limitation.*] In a suit to recover possession of certain houses and grounds appertaining thereto, it appeared that the property had formed the subject of another suit brought by the Plaintiff against his grandfather's widow and the Defendant's father and aunt, in which the Plaintiff's claim to restrain the widow from acts of waste had been dismissed, no claim, however, to the property having then been made by the Plaintiff, nor any allegation made or evidence offered to connect the Defendant's father therewith:—*Held*, that the decision in the former suit was not a decision in a suit between the same parties, or parties under whom they claim, establishing the right of the Defendants in the former suit to the property in question in the present suit, and that the cause of action in the present suit was not determined in the former suit.

A plea of limitation in the present suit cannot be sustained without evidence as to the title under which Defendants, or those under whom they claim, held the property in question; whether in their own right or as trespassers, or under an arrangement with the Plaintiff. ZEMINDAR OF PITTAPURAM *v.* PROPRIETOR OF THE MUTTA OF KOLANKA - - - - - v. 206

4. —— *Decree for Possession as Heiress—Issue—Declaratory Decree.*] The Appellant having been a party to former suit in which the Respondent obtained a decree for possession of the estate in question as mother and heiress of the last proprietor is barred by such decree from afterwards recovering possession on the ground that the Respondent is not such heiress.

Although such decree barred the Appellant from setting up in this suit a family custom for the purpose of shewing that he was entitled to possession during the life of the Respondent, he is not thereby barred from shewing that upon her death, if he survives, he will be entitled under such custom, to succeed her, and therefore to have a certain deed executed by her declared illegal and inoperative after her death.

Their Lordships, however, declined to remand the case for adjudication thereupon. A declaratory decree was matter of discretion, and, while the necessary investigation would cause great delay and expense, the claim of the Appellant was contingent on his surviving the Respondent, and the decree would not bind other members of the family not parties to the suit, with possibly preferable titles. TEKAIT DOORGA PERSAD SINGH *v.* TAKAITNI DOORGA KONWARI - v. 149

5. —— *Act X. of* 1877, *s.* 13—"*Court of Competent Jurisdiction*"—*Pecuniary Limit of Jurisdiction.*] The words "Court of competent jurisdiction" in sect. 13 of Act X. of 1877, mean a Court which has jurisdiction over the matter in the subsequent suit in which the decision is used as conclusive; in other words, a Court of concurrent jurisdiction, *i.e.*, concurrent as regards the pecuniary limit as well as the subject-matter.

In a suit for principal (Rs.12,000) and interest upon a bond brought in the Court of a Deputy-Commissioner, it was pleaded that in a suit for interest only brought in the Court of an Assistant Commissioner, it had been held that Rs.4790, and not Rs.12,000, was the amount of principal and interest which had been decreed thereon accordingly:—*Held*, that this was not *res judicata* as regards the principal amount of the bond. The pecuniary limit of the Assistant Commissioner's jurisdiction being Rs.5000 he could not effectually bind the Plaintiff as regards amount of the bond. MISIR RAGHOBARDIAL *v.* RAJAH SHEO BAKSH SINGH - - ix. 197

6. —— *Maintenance, Claim for—Causes of Action Different.*] An order dismissing a personal claim against a father for maintenance founded on an ikarnama does not bar a suit by the same Plaintiff, after the father's death, against an elder brother, to recover maintenance as a charge upon the paternal estate.—Such suit can be brought under Act XV. of 1877 within twelve years from the date when the cause of action arises. AHMUD HOSSEIN KHAN *v.* NIHALUDDIN KHAN - x. 45

7. —— *Interlocutory Order—Execution Proceedings.*] A Judge having decided in the course of execution proceedings that the decree according to its true construction awarded future mesne profits, *held*, that such decision having been or become final was binding between the parties, and could not in a later stage of the execution proceedings be set aside and future mesne profits be disallowed.—The binding force of such a

RES JUDICATA—*continued.*

decision depends upon general principles of law and not upon sect. 13, Act X. of 1877. RAM KIRPAL SHUKAL *v.* MUSSUMAT RUP KUARI xi. 37

8. —— *Grant of Certificate under Act XXVII. of* 1860 — *Court of Limited Jurisdiction* — *Act VIII. of* 1859, *s.* 2—*Act X. of* 1877, *s.* 13—*Cross Appeal.*] In a suit by a Hindu in the Court of the subordinate Judge of the district against his deceased brother's widow to recover the estate of the deceased in her possession, where the issue was as to separate or joint ownership of the brothers, *held*, that the grant of a certificate to the widow under Act XXVII. of 1860, after a determination of the issue as above against the surviving brother, being a proceeding of representation, not otherwise of title, did not constitute *res judicata* in her favour.

Held, further, that a similar determination of the said issue on the intervention of the Plaintiff in a rent-suit brought by the widow in the Moonsiff's Court, did not, under Act VIII. of 1859, s. 2, constitute *res judicata* in her favour, the said Court being one of a limited jurisdiction, and not concurrent with that of the Subordinate Judge. — *Krishna Behari Roy* v. *Brojeswari Chowdranee* (Law Rep. 2 Ind. Ap. 285) followed.—Act X. of 1877, s. 13, is to the same effect, and does not alter the previous law.

The decree of the High Court being erroneously in the widow's favour on the ground of *res judicata*, a cross-appeal by her against a finding in the judgment in favour of joint ownership was unnecessary to enable her to defend her decree on the ground that the Court ought to have decided on the merits in her favour. RAJAH RUN BAHADOOR SINGH *v.* MUSSUMUT LACHOO KOER [xii. 23

9. —— *Judgment in Rent Suit—Purchaser Pendente Lite.*] Where a zemindar grants a putni and subsequently mortgages the zemindary interest to the putnidar, who obtains a decree against the zemindar, and at a sale in execution thereof buys the zemindary interest, subject to the mortgage :—*Held*, that a purchaser from the zemindar *pendente lite* is bound by such sale; and that a rent suit by such purchaser having been dismissed his subsequent redemption suit was barred as *res judicata*. RADHAMADHUB HOLDAR *v.* MONOHUR MOOKERJI - - xv. 97

10. —— *Decree for Possession—Demarcation of Lands Decreed.*] Where a decree for possession of lands in suit has been made, the plaint describing such lands by general boundaries not sufficiently detailed to admit of exact identification, the execution proceedings under which possession has been given not defining them with any greater certainty, the possession actually taken having been of lands demarcated shortly after possession was delivered, it did not appear by whom, but in a manner subsequently approved by the revenue authorities :—*Held*, in an action by Government to eject the decree-holders, that the lands so demarcated must be accepted as covered by the decree, and that the action was barred as *res judicata*. SECRETARY OF STATE FOR INDIA *v.* DURRIBHOY SINGH - - xix. 69

11. —— *Judgment as to Sub-proprietary Right —Issue substantially the same.*] In a suit in 1883 to redeem a mortgage made in 1853 of certain villages in *Oudh* subsequently included in the talukdari sanad of the Respondent, it appeared that in 1864 the Plaintiff's ancestor had sued in the Settlement Court to redeem the same mortgage, which suit had been dismissed under sect. 114 of Act VIII. of 1859 :—*Held*, that although the suit in 1864 prayed for sub-proprietary right and the suit in 1883 for superior proprietary right, the difference was solely with regard to the mode of relief, and the cause of action being in either case substantially the same, viz., for redemption of a mortgage, the latter suit was barred. THAKUR SHANKAR BAKSH *v.* DYA SHANKAR - - - - - xv. 66

12. —— *Judgment as to Sub-proprietary Right —Act X. of* 1877, *s.* 13—*Suit to Redeem Act VIII. of* 1859, *s.* 7.] A suit by the Respondent in 1866 to establish sub-proprietary right as against the talookdar having been dismissed, and a later suit to recover the same property from the talookdar under the terms of Circular No. 106 of 1869, *i.e.*, on repaying to the talookdar the arrears of revenue which he had paid to the Government, having also been dismissed :—*Held*, that a third suit to redeem the same property under a mortgage deed was not barred as *res judicata*, under sect. 13 of Act X. of 1877 as amended by sect. 6 of Act XII. of 1879. Nor did the claim to redeem under the deed arise out of the former cause of action within the meaning of sect. 7 of Act VIII. of 1859. And the Plaintiff not then being aware of his right, it could not be regarded as a "portion of his claim" within the said section. AMANAT BIBI *v.* IMDAD HUSAIN - xv. 106

13. —— *Decree Declaring Will Revoked — Practice as to Changing Issue.*] *Held*, that a suit founded entirely on an appointment in Plaintiff's favour, made in pursuance of a will of the deceased owner which had been declared to be revoked in a previous suit to which the Plaintiff was a party, is barred as *res judicata* :—*Held*, further, that the Plaintiff having claimed under the will, could not be allowed to shift his ground and recover the property as being entitled thereto under a conveyance made by one entitled under the deceased owner's intestacy. TRILOKINATH SINGH *v.* PERTAB NARAIN SINGH - xv. 113

14. —— *Decree Refusing Injunction—Different Cause of Action—Act X. of* 1877, *ss.* 102, 103.] To a suit by reversionary heirs of the husband for a declaration that the widow's gift of her husband's estate was inoperative, the Defendants pleaded that it was barred, and it appeared that two of the Plaintiffs had, prior to the gift, and alleging the widow's intention to sell or mortgage, sued for a declaratory decree and an injunction, and that their suit had been dismissed in terms of sect. 102, Act X. of 1877 :—*Held*, that this suit was not barred by sect. 103, being founded upon a different and subsequent cause of action. MUSSUMMAT CHAND KOUR *v.* PARTAB SINGH - - - - xv. 156

15. —— *Decree as to Validity of Will—Act X. of* 1877, *s.* 13.] In a suit by the daughter and heir-at-law of a testator for relief founded on the alleged invalidity of the will, it appeared that the Defendants had in a former suit against the

Plaintiff obtained a decree in favour of the genuineness and validity of the will:—*Held*, that by sect. 13 of Act X. of 1877 the present suit was barred. SRIMATI KAMINI DEBI *v.* ASUTOSH MOOKERJEE - - - - - - xv. 159

16. —— *Estoppel by Judgment—Decree as to Present Possession—Act XIV. of* 1882, *s.* 13—*Different Issue.*] Estoppel by judgment results from a matter having been directly and substantially in issue in a former suit, and having been therein heard and finally decided. In order to see what was in issue the judgment must be looked at; the decree is usually insufficient for that purpose. —Where the decree in a former suit as explained by the judgment was to the effect that the Plaintiff was not entitled in that suit to the relief prayed for, and was not then entitled to possession of the property claimed:—*Held*, that a subsequent suit for possession was not barred thereby under sect. 13 of Act XIV. of 1882. KALI KRISHNA TAGORE *v.* SECRETARY OF STATE FOR INDIA - - - - - - xv. 186

17. —— *Pleading—Defence which ought to have been made to Former Suit—Act XIV. of* 1882, *s.* 13—*Mortgagee with Leave to Bid.*] In a suit by the Respondents upon a mortgage bond the Appellants set up that by a specific agreement they were entitled to set off rents due by the Respondents as tenants against the mortgage debt, and alleged an intention to sue separately for these rents. On failure to prove the alleged agreement the Respondents obtained a decree without any deduction for rents.—The Appellants subsequently obtained decrees for rents, and the Respondents at a sale in execution of their decree on the mortgage purchased the mortgaged estate after obtaining leave to bid.

Thereafter in a suit by the Appellants to set aside those sales, and to have the mortgage debt extinguished by setting it off against rents, they relied upon an equity in their favour to have an account and a set-off of rents against the mortgage debt:—*Held*, that this equity should have been pleaded in defence to the mortgage suit, and did not avail for the purpose of annulling the judicial sales. Under sect. 13 of the Code of Civil Procedure of 1882, the plea being one which ought to have been made a defence to the former suit, the Appellants were now barred from insisting on it.—*Held*, further, that leave to bid puts an end to the disability of a mortgagee and puts him in the same position as any independent purchaser, and consequently that the Respondents did not purchase as trustees for the Appellants. MAHABIR PERSHAD SINGH *v.* MACNAGHTEN [xvi. 107

18. —— *Decree for Possession—Demarcation of Lands—Act X. of* 1877, *s.* 13—*Different Issue—Act X. of* 1877, *ss.* 42, 43.] A decree in 1873 awarded to the Appellant certain lands as belonging to village *A*. Possession was given in September, 1876, the lands having been judicially ascertained but not demarcated. In 1877 he sued the Respondent in the Civil Court for possession of alluvial lands as belonging to village *B.*, and included therein some land already decreed to him belonging to village *A.*, but the suit was dismissed. He then sued in the Revenue Courts,

with the result that the exact lands adjudged under the decree of 1873 were demarcated and the Respondent was found to be in possession of part thereof, but denied the jurisdiction of the Revenue Courts to oust him. In February, 1886, the Appellant sued for possession of certain lands belonging to village *A.*, and adjudged to him by the decree of 1873.

Held, that this suit was not barred by limitation, for the judicial ascertainment of the lands in September, 1876, was the earliest date at which the right to sue accrued:—*Held*, further, with regard to part of the land, that though it was shewn to have been included in the suit of 1877 the decree dismissing that suit did not under sect. 13, Civil Procedure Code, bar its recovery. No issue relating to it had been heard and finally decided in that suit, except that on survey it was found to belong to village *A.* and was therefore excepted from the suit and was governed by the decree of 1873:—*Held*, further, with regard to the remainder, that the suit was not barred by sects. 42, 43, by reason of its not having been included in the suit of 1877.—Inquiry as to mesne profits directed under sect. 212 Civil Code Procedure. MAHARAJA JAGATJIT SINGH *v.* RAJAH SARABJIT SINGH - xviii. 165

19. —— *Pleading—Defence which ought to have been taken to Former Suit—Act IV. of* 1882, *s.* 13.] Where the personal liability of the Defendant might and ought to have been claimed against him in a former suit brought by the same Plaintiff on the bond to enforce such alleged charge:—*Held*, that a new suit for that purpose is barred as *res judicata* under sect. 13 of the Code of Civil Procedure. KAMESWAR PERSHAD *v.* RAJ KUMARI RUTTUN KOER - - xix. 234

20. —— *Order Refusing Execution—Act VIII. of* 1859, *s.* 2.] An order refusing an application to execute a decree is not an adjudication within the rule of *res judicata* or within sect. 2 of Act VIII. of 1859. DELHI AND LONDON BANK *v.* ORCHARD - - - - - - iv. 127

21. —— *Order on Demurrer to the Jurisdiction—Order on Demurrer as to Cause of Action—Suit for Partition.*] A demurrer having been allowed to a suit for partition by a son against his father and brother on the ground that as regards the immoveable property the Court had no jurisdiction, and that as regards the moveable property he could not assert his rights therein, according to Mitakshara law, during his father's lifetime; such order is not an adjudication between the brothers as to their rights in the joint ancestral estate, and, therefore, is no bar to a fresh suit for partition after the father's death. LAKSHMAN DADA NAIK *v.* RAMCHANDRA DADA NAIK - - - - - - vii. 18

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See CAUSE OF ACTION. 1.

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See EXECUTION OF DECREE. 8, 10.

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See EXECUTION SALES. 14.

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See GHATWALI TENURES. 3.

RES JUDICATA—*continued.*

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See HINDU LAW. 36, 103.

—— - xviii. 158; xix. 234: xx. 155, 183
See LIMITATION. 33, 3, 35, 40.

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See MORTGAGOR. 3.

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See OUDH LAW. 26.

RESIDUARY BEQUEST TO CHARITY - iii. 32
See WILLS. 3.

REST OF YOUR FAMILY - - - xx. 9
See DEEDS. 6.

RESTORATION OF APPEAL ON SECURITY BEING GIVEN - - xiii. 57
See PRACTICE. 46.

RESTRAINT ON ALIENATION - xii. 103
See HINDU LAW. 112.

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See INAMDARS. 1.

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See MAHOMEDAN LAW. 22.

RESUMPTION - - Supp. 181; ix. 104
See GHATWALI TENURES. 1, 2.

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See HAWALAH TENURE.

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See INAMDARS. 2.

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See OUDH LAW. 31.

RESUMPTION BY GOVERNMENT OF LANDS, ARMS, AND STORES - Supp. 10
See ACT OF STATE. 1.

RESUMPTION OF IMPARTIBLE ESTATE
See HINDU LAW. 54. [vii. 38

REVERSIONARY HEIRS REMOTE AND PRESUMPTIVE - - - viii. 14
See HINDU LAW. 72.

REVERSIONERS - - - - xx. 183
See HINDU LAW. 99.

REVIEW OF JUDGMENT—*Order for Review after Time.*] An order of a civil Court admitting a review of judgment after the expiration of ninety days from the date of its decree, without stating that there was, or that it had been shewn to its satisfaction that there was, sufficient cause or excuse for the delay, was *held* to be improperly granted, and was set aside, together with all subsequent proceedings in the cause. LUCHMUN SINGH, AJEET SINGH AND RAMDEEN SINGH *v.* SHUMSHERE SINGH - - - ii. 58

2. —— *Practice—Judgment in Review after Appeal, to Privy Council.*] Where, after appeal brought, the Court below has passed a judgment in review in the same case, which has been sent up and notified to Her Majesty in Council, and put on record in the appeal case, it is open to the Judicial Committee to pass judgment on the appeal, without prejudice to the subsequent judgment which was passed on review. TOONDUN SINGH *v.* POKHNARAIN SINGH - - i. 342

REVIVAL OF PRIOR TITLE vi. 76; xii. 124
See OUDH LAW. 2, 3.

REVIVOR - - - - - xv. 209
See PRACTICE. 12.

REVOCATION OF WILL - - iv. 228
See HINDU LAW. 109; and OUDH LAW. 17.

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See WILLS. 8.

RIGHT OF CONQUEST - - - ii. 38
See ACT OF STATE. 3.

RIGHT TO FLOW OF WATER - vi. 33
See RIPARIAN PROPRIETORS. 2.

RIGHT TO PARTITION - - i. 1
See HINDU LAW. 66.

RIGHTS OF MORTGAGEE - - xii. 12
See LIMITATION. 23.

RIGHTS OF WATER - - - vii. 240
See LIMITATION. 22.

RIGHTS OF WIDOWS INTER SE - xix. 184
See HINDU LAW. 102.

RIPARIAN PROPRIETORS—*Boundary Fluctuating—Custom—Contract to Determine Boundaries Contingently—Covenant, whether running with the Land.*] There may be a fluctuating boundary (viz., the course of a river) between two zillahs, which by no means affects the rights of landed proprietors.

A custom to the effect that where land which had once been alluvial lies between two branches of a river, or between two rivers, and from time to time the water shifts, so that alternately one of these channels is deep and the other is fordable, then the whole of such intermediate land belongs to the landowner on the side of the channel which at any given time is fordable—in short, that the ownership and right of possession of the whole intermediate tract of land shift with the volume of the water, always attaching to the riparian proprietor on the side of the channel which happens for the time being to be fordable—must be established by very clear and distinct evidence, since the operation of such a custom must be to render the rights of property fluctuating and precarious.

An ikarnamah between two zemindars as to the mode of determining the boundaries of their estates according as a river becomes fordable on the side of one or other of such estates, whatever may be its effect as between the parties thereto, is not a covenant which will run with the land into the hands of any possessor of it by any title. BABOO BISSESSURNATH *v.* MAHARAJAH MOHESSUR BUX SINGH BAHADOOR - - - Supp. 34

2. —— *Right to Flow of Water—Artificial Channel—Natural Channel—Implied Contract.*] The right to the water of a river flowing in a natural channel through a man's land, and the right to water flowing to it through an artificial watercourse constructed on his neighbour's land, do not rest on the same principle. In the former case each successive riparian proprietor is *primâ facie* entitled to the unimpeded flow of the water in its natural course, and to its reasonable enjoyment as it passes through his land, as a natural incident to his ownership of it. In the latter any right to the flow of the water must rest on some grant or arrangement, either proved or presumed, from or with the owners of the lands from

RIPARIAN PROPRIETORS—*continued.*

which the water is artificially brought, or on some other legal origin.—*Wood* v. *Waud* (3 Ex. 748; 18 L. J. (Ex.) 205) approved.

Held, in this case that the Plaintiff's legal right to the enjoyment of water overflowing from an artificial reservoir through an artificial watercourse on his neighbour's (the Defendant's) land should be presumed from the circumstances under which the same were presumably created and actually enjoyed; subject to the Defendant's right to the use of the water for the purpose of irrigating his lands by proper and requisite channels and other proper means. RAMESHUR PERSHAD NARAIN SINGH *v.* KOONJ BEHARI PATTUK [vi. 33

3. —— *Tidal Creek—Encroachment on Bed of Stream.*] The Plaintiff and Defendant were proprietors of land and gardens on opposite sides of a tidal creek, which sides were protected by walls. The Defendant, the wall on his side becoming dilapidated, constructed a fresh one, altering its direction, and encroaching five feet upon the bed of the stream.—In a suit for possession of land by demolishing the said wall, the Plaintiff alleged that he was entitled to the *solum* on which it was built, that his navigation was obstructed, and that there was a danger of his screw-house falling down; it appeared however that the Government and not the Plaintiff was the owner of the *solum*, and that the Plaintiff neither claimed nor proved that he was entitled to the flow of the water as it had been accustomed to flow, and that that flow was seriously and sensibly diverted so as to be an injury to his rights:—*Held*, reversing the decree of the High Court, that the Plaintiff had failed to shew either *damnum* or *injuria*, and therefore had no right of action.—*Bickett* v. *Morris* (1 H. L., Sc. 47) considered. KALI KISHER TAGORE *v.* JODOO LALL MULLICK - vi. 190

ROAD CESS AUTHORITIES PROCEDURE [xx. 70

See SALE FOR ARREARS OF REVENUE. 4.

RULE 35 UNDER 2 WILL. 4, cl. 51 - viii. 159

See PRACTICE. 49.

RULES OF MARCH 31, 1870, ss. 2, 3.

See LEGAL PRACTITIONERS. 1.

SALE BY APPARENT OWNER - Supp. 40

See ESTOPPEL. 6.

SALE BY WIDOW - - - - ii. 7

See HINDU LAW. 106.

SALE FOR ARREARS OF RENT - - i. 178

See PUTNEE TENURE.

SALE IN EXECUTION OF CO-PARCENER'S SHARE - - - xx. 116

See HINDU LAW. 35.

SALE OF RIGHT, TITLE, AND INTEREST

See EXECUTION OF DECREE. 1. [ii. 131

SALE OF TENURE - - - - vi. 47

See EXECUTION SALES. 4.

SALE OF UNDIVIDED SHARE - xvii. 194

See HINDU LAW. 33.

SALE OF WIDOW'S ESTATE - ii. 275

See HINDU LAW. 100.

SALE OF WIDOW'S RIGHT, TITLE, AND INTEREST - - - xi. 59

See HINDU LAW. 104.

SALE UNDER ERRONEOUS DECREE VALID

See EXECUTION SALES. 1. [i. 321

SALE WITH RIGHT TO REPURCHASE

See MORTGAGE. 3. [xvii. 98

SALES FOR ARREARS OF REVENUE—*Act XI. of* 1859, *s.* 5—"*Arrears of Estate under Attachment.*"] Where an estate, or a share in an estate, not severed for the purposes of revenue, is under attachment by order of a civil Court in execution of a decree, such estate or share cannot, under sect. 5 of Act XI. of 1859, be sold for arrears of revenue without the notice required by sect. 5 of that Act.—The words "arrears of estates under attachment" are not confined to estates the whole of which are under attachment. BUNWAREE LALL SAHOO *v.* MOHABEER PROSHAD SINGH - i. 89

2. —— *Certified Purchaser—Act I. of* 1845, *s.* 21—*Hindu Joint Family, Purchase by.*] A purchase at a sale for arrears of revenue under Act I. of 1845 made by the managing member of a joint Hindu family in his own name, but on behalf of the joint family, is not affected by the 21st section of that Act; and the members of the joint family can sue to enforce rights acquired by them under such a purchase, as against the managing member, though he is the sole certified purchaser. TOONDUN SINGH *v.* POKHNARAIN SINGH - - - - i. 342

3. —— *Act XI. of* 1859, *s.* 28—*Collector's Order of Exemption—Act XI. of* 1859, *s.* 33—*Annulment of Sale.*] *Held*, that a Collector's order, under sect. 28 of Act XI. of 1859, for exempting an estate from sale for arrears of revenue must be an absolute order of exemption, and not an order conditional upon something being done or some payment being made.—Under sect. 33 a sale cannot be annulled by a civil Court as having been made contrary to the Act, unless upon a ground previously taken by the Plaintiffs in an appeal from the Collector to the Commissioner. LALA GOWRI SUNKER LAL *v.* JANKI PERSHAD xvii. 57

4. —— *Bengal Act VII. of* 1880 (*Public Demands Recovery Act*)—*Suit to Cancel a Certificate—Cesses—Road Cess Authorities Procedure.*] In a suit by the Respondent to cancel a certificate issued under Act VII. of 1880 (Beng. C.), and an auction sale of his villages in execution of that certificate, and for confirmation of proprietary right, it appeared that the certificate, though in statutory form, was in a tattered condition, wanting the Collector's signature, and erroneously set forth as debtors two out of the three former proprietors; that the notice thereunder, if served, was addressed in the same way; that the execution sale purported to pass to the Appellant the interest of the three former proprietors; that no certificate of purchase was produced or evidence given of price paid:—*Held*, that such proceedings could not affect the Respondent's proprietary right, and that his suit must be decreed.—The procedure to be observed by the road cess authorities explained. MAHOMED ABDOOL HAI *v.* GUJRAJ SAHAI - - xx. 70

5. —— *Act XI. of* 1859, *s.* 17—*Arrears of Estates subject to Collector's Order under Cess*

SALES FOR ARREARS OF REVENUE—*contd.*

Act, 1880—*Act XI. of* 1859, *s.* 33—*Sales Illegal on Grounds "Declared and Specified."*] A purchaser at a sale in execution of a decree obtained by a first mortgagee in a suit to which puisne incumbrancers are not parties does not displace the latter, but stands in the position of first mortgagee.—A Government sale for arrears of revenue is contrary to sect. 17 of Act XI. of 1859 if made for arrears which have accrued while the land was subject to an order issued by the Collector under the *Cess Act*, 1880, for levy of road cess in arrears. Such order is an attachment within the meaning of sect. 17.—But sect. 33 bars a suit to set aside such sale except on grounds "declared and specified" in a previous appeal made to the Commissioner under sect. 25. That section applies not merely to cases where the sale has been irregularly conducted, but also where the sale has been illegal in consequence of some express provision for exemption having been directly contravened.—*Lala Gowri Sunker Lal* v. *Janki Pershad* (Law Rep. 17 Ind. Ap. 57) followed. RAJAH GOBIND LAL ROY *v.* RAMJANAM MISSER **xx. 165**

6. —— *Reg. VIII. of* 1819, *s.* 8, *cl.* 2—*Attestation by "Substantial Persons"—Notice of Sale of Putnee Tenure—Service of Notice.*] In a suit to cancel a sale of a putnee tenure under Reg. VIII. of 1819, on the ground that the witnesses who attested the due publication of notice were not "substantial" persons within the meaning of sect. 8, clause 2 of the Regulation:—*Held* (reversing the judgment of the High Court), that a "substantial" person does not necessarily mean a wealthy man from whom damages could be recovered by the putneedar, supposing the attestation to be false. Wealth is only an element in the position and *status* of a witness, and the judge in each case must satisfy himself that the witness is a man of respectability resident in the neighbourhood.—Where it is proved that the notice of sale has been actually served, the sale is not vitiated merely because one of the witnesses to the notice is held not to be substantial within the meaning of the clause.—*Sona Bebee* v. *Lall Chand Chowdhry* (9 Suth. W. R. 242) approved.—It appearing that the petition on which special leave to appeal was granted contained a material misstatement of fact, their Lordships refused the costs of the appeal. There must be *uberrima fides* in applying for such leave, otherwise an order granting it will be rescinded on application by the Respondent at any time before the appeal has been actually entered upon. If such misstatement should appear, even at the latest stage, to have been made with the intention to deceive, the appeal will be dismissed. RAM SABUK BOSE *v.* MONMOHINI DOSSEE - - - - **ii. 71**

7. —— *Reg. VIII. of* 1819, *s.* 8—*Publication of Notices of Sale.*] *Held*, that the due publication of the notices required by Reg. VIII. of 1819 forms an essential portion of the foundation on which the summary power of sale is exercised, and that the zemindar who institutes the proceeding is exclusively responsible for its regularity, and should take care that the due publication is not left matter of controversy. MAHARAJAH OF BURDWAN *v.* SRIMATI TARA SOONDARI DEBIA - - - - - - **x. 19**

SALES FOR ARREARS OF REVENUE—*contd.*

8. —— *Reg. VIII. of* 1819, *s.* 8, *cl.* 2—*Service of Notice of Sale.*] *Held*, that under Reg. VIII. of 1819, sect. 8, para. 2, it is necessary for a sale thereunder that not merely the notice therein referred to should be stuck up at the Collector's and zemindar's kucherees, but that it must also be published in the required manner at the kucheree on the land of the defaulter, meaning on the land which it is sought to sell under the Regulation, or if he has no kucheree, then at the principal town or village on the said land.—Service on the defaulter personally is not sufficient. MAHARANI OF BURDWAN *v.* MURTUNJOY SINGH - - - - - - **xiv. 30**

9. —— *Reg. VIII. of* 1819, *s.* 8, *cls.* 2 *and* 3 *—Notice of Sale—New Objection in Appeal Court.*] It is a condition precedent to a valid sale under Regulation VIII. of 1819 for six months' arrears of rent that the notice of sale should follow strictly the terms of clause 3 of sect. 8, and so intimate to the debtor not merely the balance due but that payment of three-fourths thereof will prevent a sale. If the notice follows instead the terms of clause 2, and intimate that the whole arrear must be paid, it is essentially defective, and the sale must be set aside.—Although the objection was not taken in the lower Court, yet appearing on the face of the notice, and being fatal to the proceeding, it was competently taken in appeal before the High Court. *Olpherts and Macnaghten* v. *Mahabir Pershad Singh and Another* (Law Rep. 10 Ind. Ap. 25) distinguished. NAWAB KHAJA AHSANULLA KHAN BAHADOOR *v.* HURRI CHURN MOZOOMDAR - - **xix. 191**

—— - - - - - - - **i. 335**

See LIMITATION. 6.

SALES ILLEGAL ON GROUNDS DECLARED AND SPECIFIED - - xx. 165

See SALE FOR ARREARS OF REVENUE. 5.

SALES IN EXECUTION OF DECREES.

See Cases collected under EXECUTION SALES.

SALT DEPARTMENT—*Bengal Reg. I. of* 1824, *s.* 9, *cl.* 11—*Monopoly of Salt Manufacture—Salt Lands Subject to Khalari Payment—Land Tenure.*] Salt lands worked by the Salt Department from the time of the assumption by the Government of the monopoly of salt manufacture to the present day, though held by the Government subject to khalari payment, are nevertheless in contemplation of law (having regard to Reg. I. of 1824, sect. 9, cl. 11) lands held by the department rent free, whether they did or did not originally belong to a permanently settled estate; and when relinquished by that department are liable to assessment. If settled with others than the zemindar within the ambit of whose zemindary they are situated, the remissions made from his jumma during the holding by the department on account of khalari and other compensations will be allowed in perpetuity. SECRETARY OF STATE FOR INDIA *v.* RANI ANUNDMOYI DEBI - **viii. 172**

SANTÂN AND SRENI KRAMÉ - v. 138

See HINDU LAW. 27.

SARANJAMS - - - - xx. 50

See INAMDARS. 2.

SARAOGEE AGARWALAS - - v. 87
See JAIN LAW. 2.
SEBAITS - - - - xix. 108
See HINDU LAW. 24.
—— - - - - - viii. 135
See PRACTICE. 31.
SEBAITS' POWERS AS MANAGER - ii. 145
See RELIGIOUS ENDOWMENTS. 2.
SEBAITSHIP - - - - xvi. 137
See RELIGIOUS ENDOWMENTS. 8.
SECOND ADOPTION INVALID Supp. 131; xx. 30
See HINDU LAW. 25, 26.
SECOND APPEALS xvi. 125; xvii. 122; xix. 228; [xvii. 65; xix. 48; xvi. 233
See APPEALS. 6—11.
SECOND MORTGAGEE - - - iv. 15
See MORTGAGEE. 2.
SECONDARY EVIDENCE - - xvi. 125
See APPEALS. 6.
—— - - - - - - ix. 64
See ESTOPPEL. 1.
—— - - - - xiv. 71; ii. 87
See EVIDENCE. 5, 8.
—— - - - - - - xix. 79
See PRACTICE. 26.
SECURITY IN APPEAL xi. 7; xiii. 57; xvii. 1; [xvii. 9
See PRACTICE. 45—48.
SEIZURE OF LANDS BY CROWN - ii. 38
See ACT OF STATE. 3.
SELF-ACQUIRED ESTATE viii. 99; ix. 128
See HINDU LAW. 73, 56.
SEPARATE ACQUISITION WITH JOINT FUNDS - - - iv. 109
See HINDU LAW. 37.
SEPARATE ENJOYMENT BY TENANT IN COMMON - - - xvii. 110
See TENANCY IN COMMON. 1.
SERVICE OF FORECLOSURE PETITION v. 18; [xi. 186
See MORTGAGEE. 5, 6.
SERVICE OF NOTICE - - - ii. 71; xiv. 30
See SALES FOR ARREARS OF REVENUE. 6, 8.
SETTING ASIDE AWARD - - iii. 209
See ARBITRATION. 5.
SETTING ASIDE EXECUTION PROCEEDINGS [vii. 233
See EXECUTION OF DECREE. 12.
SET-OFF IN COSTS - - - x. 113
See PRACTICE. 34.
SET-OFF OF ATTACHED DECREE - viii. 65
See EXECUTION SALES. 5.
SHANKALLAPS - - - - vii. 17
See BIRT TENURES.
SHARE OF LITIGATED PROPERTY IF RECOVERED - - - iv. 23
See CHAMPERTY. 2.
SHERIFF'S LIABILITY - - - v. 116
See EXECUTION SALES. 3.
SHIPOWNERS - - - - xvi. 240
See GENERAL AVERAGE.
SIMULTANEOUS ADOPTIONS - xii. 196; [xix. 108
See HINDU LAW. 17, 24.
SLAVERY - - - - - vi. 137
See MAHOMEDAN LAW. 19.
SON BORN AFTER ANCESTRAL ESTATE ALIENATED - - - i. 321
See HINDU LAW. 40.
SON NOT CO-SHARER WITH FATHER xv. 51
See HINDU LAW. 58.
SON'S DUTY TO PAY HIS FATHER'S DEBTS [i. 321
See HINDU LAW. 40.
SON'S INCHOATE INTEREST BY BIRTH [viii. 190; xv. 51
See HINDU LAW. 38, 58.
SON'S LIABILITY FOR FATHER'S DEBTS [xvi. 1; xvii. 11
See HINDU LAW. 48, 49.
SONS BY DIFFERENT MOTHERS, PRIORITY OF - - - - - Supp. 1
See HINDU LAW. 51.
—— - - - - - - - viii. 1
See HINDU LAW. 91.
SPECIAL LEAVE TO APPEAL.
See PRACTICE. 1—11.
—— - - - - - - - vii. 6
See LEGAL PRACTITIONERS. 4.

SPECIFIC PERFORMANCE—*Act I. of* 1877, *s.* 31—*Suit to Reform a Mortgage.*] Suit for reforming or altering a deed of mortgage dismissed, there being no reason to suppose that there was any fraud or deceit on the part of the Defendants, or that there was any mutual mistake of the parties as to the amount which was stated as the sum for which the security was given. MUSSAMAT AMANAT BIBI *v.* LUCHMAN PERSHAD AND NAROTAM DASS - - - - xiv. 18

2. —— *Delay by Purchaser.*] Where a purchaser delayed payment of the purchase-money of immoveable estate, insisting upon the insertion in the conveyance of an absolute warranty of title by the vendor to the property sold:—*Held*, that as a right to such covenant was not shewn, his delay of payment was not excused, and there was no case for decreeing specific performance. BABU BINDESHRI PARSHAD *v.* MAHANT JAIRAM GIR - - - - - - xiv. 173

STAY OF EXECUTION PENDING APPEAL
See PRACTICE. 7. [xiv. 1
STOPPAGE IN TRANSITU - - xviii. 78
See PRINCIPAL AND BANIAN.
STRIDHAN.
See HINDU LAW. 74, 75.
SUBMERGED LANDS - - - ii. 28
See ACCRETION. 1.
SUBORDINATE TENURES IN GHATWALI ESTATE - - - xii. 188
See GHATWALI TENURES. 3.
SUB-PROPRIETARY RIGHTS - - v. 225
See OUDH LAW. 32.
SUBSEQUENT MESNE PROFITS - ii. 219
See EXECUTION OF DECREE. 2.
SUB-SETTLEMENT - - - Supp. 220
See cases under OUDH LAW.

SUBSTANTIAL ERROR IN PROCEDURE
See APPEALS. 9. [xvii. 65

SUBSTANTIAL INJURY x. 25; xx. 176; xv. 171
See EXECUTION SALES. 6, 11, 15.

SUBSTANTIAL OBJECTION TO AWARD
See ARBITRATION. 5. [iii. 209

SUCCESSION.
See Cases under HINDU LAW.

—— - - - - - - ix. 104
See GHATWALI TENURES. 2.

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See OUDH LAW. 16—19.

—— - - - - - Supp. 192; vi. 137
See MAHOMEDAN LAW. 16, 19.

—— - - - - x. 32; xvi. 137; xx. 150
See RELIGIOUS ENDOWMENTS. 5, 8, 9.

SUCCESSION OF MOHUNTS - xiii. 100
See RELIGIOUS ENDOWMENTS. 6.

SUDRAS - - vii. 24, 250; xvii. 128
See HINDU LAW. 1, 2, 65.

SUIT AGAINST CO-PARCENERS - xiv. 187
See EXECUTION SALES. 8.

SUIT AGAINST GOVERNMENT HOLDING UNDER FORFEITURE - xii. 120
See LIMITATION. 29.

SUIT AGAINST PURCHASER FROM MORTGAGOR - - - - xvi. 85
See LIMITATION. 38.

SUIT BY DEVISEE UNDER A WILL xiv. 168
See LIMITATION. 39.

SUIT BY HINDU WIDOW AS REVERSIONARY HEIR - - - - iii. 72
See HINDU LAW. 14.

SUIT BY MAHOMEDAN WIDOW TO RECOVER MOVEABLE ESTATE OF DECEASED
See LIMITATION. 35. [xx. 155

SUIT BY PURCHASER - - - ix. 21
See DECREE. 4.

SUIT BY PURCHASER FOR REFUND AGAINST EXECUTION CREDITOR - v. 116
See EXECUTION SALES. 3.

SUIT BY REVERSIONARY HEIR TO SET ASIDE ADOPTION - - xiii. 84
See HINDU LAW. 13.

SUIT BY REVERSIONER - - xx. 183
See LIMITATION. 40.

SUIT BY SEBAITS - - - viii. 135
See PRACTICE. 31.

SUIT FOR CONFIRMATION OF POSSESSION
See DECREE. 2. [i. 192

SUIT FOR INJUNCTION - - Supp. 175
See EASEMENT. 2.

SUIT FOR PARTITION - - - vii. 18
See HINDU LAW. 36.

—— - - - - - - - i. 9
See LIMITATION. 11.

—— - - - - - vii. 18
See RES JUDICATA. 21.

SUIT FOR POSSESSION - xvii. 159; xix. 75; [xvi. 23
See ONUS PROBANDI. 3, 5, 7.

SUIT FOR POSSESSION—*continued.*
—— - - - - - xvi. 129
See MORTGAGE. 2.

SUIT FOR POSSESSION INVOLVING INVALIDITY OF ADOPTION - xiii. 84
See LIMITATION. 26.

SUIT FOR POSSESSION OF IMMOVEABLE ESTATE - - - - ix. 99
See LIMITATION. 18.

SUIT FOR SHARE OF JOINT ESTATE [xii. 112; xv. 167
See LIMITATION. 36, 10.

SUIT FOR SHARE OF LAND - - i. 157
See LIMITATION. 8.

SUIT MUST INCLUDE THE WHOLE CLAIM
See CAUSE OF ACTION. 8. [xii. 116

SUIT TO CANCEL A CERTIFICATE - xx. 70
See SALE FOR ARREARS OF REVENUE. 4.

SUIT TO CANCEL DOCUMENT OR ACT v. 87
See JAIN LAW. 2.

SUIT TO DECLARE VOID DEEDS OF GIFT AND ACCEPTANCE OF A CHILD Supp. 149
See DECLARATORY DECREE. 2.

SUIT TO OBTAIN CONTROL OF TRUST PROPERTY - - - - ix. 90
See LIMITATION. 20.

SUIT TO RECOVER POSSESSION OF LAND
See LIMITATION. 25. [vi. 110

SUIT TO REDEEM - - xii. 171; xiii. 66
See MORTGAGOR. 3, 4.

—— - - - - - - xv. 106
See RES JUDICATA. 12.

SUIT TO REFORM A MORTGAGE - xiv. 18
See SPECIFIC PERFORMANCE. 1.

SUIT TO SET ASIDE ADOPTION viii. 14; xx. 30
See HINDU LAW. 72, 26.

—— - - - - - vi. 110; xiii. 84
See LIMITATION. 25, 26.

SUIT TO SET ASIDE AGREEMENT - iv. 101
See CONTRACT. 4.

SUIT TO SET ASIDE AN ASSERTION OF TITLE
See DECLARATORY DECREE. 3. [ii. 83

SUIT TO SET ASIDE DEED - - xiv. 148
See LIMITATION. 31.

—— - - - - - - - i. 292
See ONUS PROBANDI. 1.

SUIT TO SET ASIDE DEED AND WILL iii. 291
See MAHOMEDAN LAW. 20.

SUIT TO SET ASIDE EXECUTION SALE x. 25
See EXECUTION SALES. 6.

SUIT TO SET ASIDE FORGED DEED viii. 197
See LIMITATION. 24.

SUIT TO SET ASIDE IKRARS AS FORGED
See MAHOMEDAN LAW. 1. [ii. 87

SUIT TO SET ASIDE RELEASE FROM ATTACHMENT - - - - xv. 123
See LIMITATION. 30.

SUITS BY AND AGAINST CERTIFIED PURCHASER - - - - ii. 154
See CERTIFIED PURCHASER.

SUITS FOR EXCLUSIVE POSSESSION xvii. 62
See DECREE. 1.

SUMMARY SETTLEMENT - Supp. 220, 237
See OUDH LAW. 7, 8.

SUMMARY SETTLEMENT BEFORE OCT. 10, 1859, AND SUNNUD BEFORE 1869
See OUDH LAW. 10. [iii. 259

SUNNI LAW AND USAGE - - xviii. 59
See MAHOMEDAN LAW. 18.

SUNNI RULES OF DESCENT APPLICABLE TO SUNNI WIDOW - - xvii. 73
See MAHOMEDAN LAW. 17.

SUNNUD - - - - xviii. 149
See DEEDS. 5.

—— - - - - - - - v. 138
See HINDU LAW. 27.

SUNNUD, REFORM OF - - Supp. 220
See OUDH LAW. 7.

SUPERINTENDENCE OF RELIGIOUS ENDOWMENT - - - - i. 209
See RELIGIOUS ENDOWMENTS. 1.

SURETY - - - - - - ix. 58
See PRINCIPAL AND SURETY.

SURRENDER OF WIDOW'S ESTATE xix. 30
See HINDU LAW. 96.

SURVIVORSHIP - - - xvii. 194
See HINDU LAW. 33.

SUSPENSION FROM PRACTICE - vii. 6
See LEGAL PRACTITIONERS. 4.

SUSPENSION OF LIMITATION - - iii. 7
See HINDU LAW. 39.

—— - - - - - - - ix. 82
See LIMITATION. 2.

—— - - - - - - - vii. 18
See ESTOPPEL. 8.

TALOOKDAR'S LIABILITY TO SUB-SETTLEMENT - - - - vi. 1
See OUDH LAW. 9.

TALOOKDARY RIGHTS - - Supp. 220
See OUDH LAW. 7.

TAMLIK - - - - - xi. 135
See WILLS. 1.

TANK, REPAIRS OF - - - xvi. 48
See EVIDENCE. 9.

TANKS - - - - - - i. 364
See DAMAGES. 3.

TENANCY IN COMMON—*Land Tenure—Separate Enjoyment by Tenant in Common—Joint Possession—Injunction.*] Where an estate in *Bengal* was held by Plaintiffs and Defendants as tenants in common, and Defendants were in actual occupation and cultivation of part of such estate as if it were their own separate property; and it appeared that the Defendants had resisted the Plaintiffs' entry upon such part, not in denial of their title, but to protect such cultivation from wilful interference, such resistance does not entitle the Plaintiffs to a decree for joint possession, or to an injunction. Where no specific rule exists, the Courts are to act under the

TENANCY IN COMMON—*continued.*

Bengal regulations—according to justice, equity, and good conscience. Consistently with that rule one tenant in common cannot be restrained from cultivating a portion of the lands not actually used by another, nor can one tenant in common be allowed to appropriate to himself the fruits of another's labour or capital. WATSON & Co. *v.* RAM CHAND DUTT - - - xvii. 110

2. —— *Land Tenure — Ferry — Exclusive User by Tenant in Common—Joint Possession.*] It is recognised law in *India* that a man may set up a ferry on his own property, and take toll from strangers for carrying them across, and may acquire by grant or user the right to do so on the property of others, whether he is co-owner with them or not. — Where he sets up a ferry on property of which he is co-owner with others whom he does not dispossess, and whose user, whether of land or ferry, he does not restrict, and expends his own money in so doing, and thereby reaps a profit for himself:—*Held*, in a suit by such co-owners for an injunction and a share of the profits, that as the Defendant's profits had been earned by his exclusive efforts and without excluding any co-owner from his use of the joint property, such suit must be dismissed. Costs refused, as the Defendant had unsuccessfully set up a claim to an exclusive title based on adverse possession.—*Watson* v. *Ram Chand Dutt* (L. R. 17 Ind. Ap. 110) considered.

The Courts should be very cautious of interfering with the enjoyment of joint estates as between their co-owners.—A second appeal will lie on a finding of adverse possession, when such finding is a mixed question of law and fact depending upon the proper legal conclusion to be drawn from the findings as to simple facts. MAHARAJAH SIR LUCHMESWAR SINGH BAHADOOR *v.* SHEIK MANOWAR HOSSEIN - - - xix. 48

TESTAMENTARY STATEMENT TO PUBLIC OFFICER - - - xvii. 82
See OUDH LAW. 21.

TIDAL CREEK - - - - vi. 190
See RIPARIAN PROPRIETORS. 3.

TODA GIRAS - - - - i. 34
See LIMITATION. 12.

TODA GIRAS HUKK - - - viii. 77
See PENSIONS ACT OF 1871. 2.

TRANSFER OF JURISDICTION - iii. 102
See CESSION OF BRITISH TERRITORY.

TRANSFER OF SUITS—*Jurisdiction of Local Courts—Act X. of 1877, s. 25—Invalid Transfer of Suit by Consent.*] *Held*, that under sect. 25 of the Civil Procedure Code, the Superior Court cannot make an order of transfer unless the Court from which the transfer is sought to be made has jurisdiction to try it.—*Peary Lall Mazoondar* v. *Komal Kishore Dassia* (Ind. L. R. 6 Calc. 30) approved.—A suit having been instituted in the Court of the Subordinate Judge who was incompetent to try it, the same was transferred by consent of parties to the Court of the District Judge for convenience of trial; *held*, that such transference was incompetent, and that such consent did not operate as a waiver of the plea to the jurisdiction which was taken in the Defendant's

TRANSFER OF SUITS—*continued.*
written statement and subsequently insisted upon. LEDGARD *v.* BULL - - xiii. 134
—— - - - - - vi. 126
See HIGH COURT. 3.

TRANSFER OF PROPERTY ACT, 1882, s. 43
See ESTOPPEL. 5. [xix. 221

TRANSFER OF RENT DECREES FOR EXECUTION, ACT VIII. OF 1859, s. 284
See RENT COURTS. [ix. 174

TRANSFER OF TERRITORIES FROM ONE JURISDICTION TO ANOTHER iii. 102
See CESSION OF BRITISH TERRITORY.

TRESPASSERS—*Payments of Revenue—Wrongful Possession.*] Where the Appellant, being in possession of revenue-paying land under a decree of the High Court, in good faith paid the revenue, failed through no fault of his own to reimburse himself out of the rents, and was afterwards ejected by the Respondents, who had obtained from the Privy Council a reversal of the said decree:—*Held*, that he was entitled to recover the balance of such payments over receipts.—*Quære*, whether he would not have been so entitled had his possession been wrongful.—*Peruvian Guano Company* v. *Dreyfus Brothers* ([1892] A. C. 166) referred to. DAKSHINA MOHUN ROY CHOWDHRY *v.* SARODA MOHUN ROY CHOWDHRY xx. 160

2. —— *Declaratory Suit—Possession—Wakf.*] In a suit for a declaration that the Plaintiff was absolute owner of the land in suit and for an injunction, the defence was that the land was subject to a wakf created by the Plaintiff's predecessor in title, and that the Defendant was mutwali thereof. Both Courts found in favour of the Plaintiff's possession, and that the Defendant was not the mutwali nor possessed of any interest in the land, but differed as to the dedication:—*Held*, that the Plaintiff was entitled to a declaration as against the Defendant that he was lawfully entitled to possession and the relief consequent thereon. It was unnecessary to decide as to the validity of the wakf for the purposes of the suit or in the absence of the parties interested. ISMAIL ARIFF *v.* MAHOMED GHOUSE xx 99

TRIBAL CUSTOM - - - - x. 133
See POTTAH. 5.

TRUSTS—*Purchase by Trustee—Inadequate Consideration.*] *J. C. M.*, as executor of his father, obtained a decree for Rs.170,000, and held the same in trust as respects one-fifth thereof for the Plaintiffs. Subsequently he took an assignment for the joint benefit of himself and his brother *S.* of the beneficial interest in the Plaintiffs' share for Rs.5000, from *M.*, one of the executors of the Plaintiffs' father. The Plaintiffs had derived title to their one-fifth share under the will of their father, and subsequently obtained a decree for the said Rs.5000 against *M.* in an administration suit. *J. C. M.* was co-executor with *M.* of the Plaintiffs' father, though he was said to have renounced.

In a suit against *J. C. M.* to declare the said assignment invalid except as a security for the said Rs.5000, and any other sums justly due (*M.* and *S.* being made party Defendants):—*Held*, that the purchase being for inadequate consideration was invalid, and that the share must be restored to the Plaintiffs on the purchase-money being returned, inasmuch as *J. C. M.* holding the decree in a fiduciary position for the Plaintiffs could not purchase the same either for his own benefit, or that of himself and his brother jointly. Such a suit being against *J. C. M.* as a purchaser in his own right, is not in the nature of a review of the decree against *M.*, who had been sued as executor of the Plaintiffs' father. DHONENDER CHUNDER MOOKERJEE *v.* MUTTY LALL MOOKERJEE - - ii. 18

2. —— *Charitable Trusts — Dedication to Charity.*] Where certain specific property (part of a testator's estate) had been set apart by the executors to answer the charitable trusts created by his will, and the residue of his estate had been made over to the Appellant (residuary legatee and heir) who ratified such arrangement by deed and himself became a trustee:—*Held*, that there had been a valid dedication to charitable purposes of the said property, whether or not the will, having regard to the testator's proprietary right, was originally operative for that purpose as against the heir. PURMANUNDASS JEEVUNDASS *v.* VENAYEKRAO WASSOODEO - - ix. 86

—— - - - - - iv. 178
See OUDH LAW. 11.

TRUSTS VALID BY HINDU LAW - Supp. 47
See HINDU LAW. 31.

UNCERTIFIED COPY OF DECREE - x. 4
See EXECUTION OF DECREE. 6.

UNCHASTITY - - - - vii. 115
See HINDU LAW. 88.

UNCONSCIONABLE BARGAIN AS TO INTEREST - - - xii. 215
See HIGH COURT. 2.

UNDIVIDED SHARE - - - i. 106
See MORTGAGEE. 1.

UNDUE INFLUENCE - - - xv. 81
See ISSUES. 2.

—— - - - - - xiv. 148
See LIMITATION. 31.

—— - - - - ii. 87; xv. 81
See MAHOMEDAN LAW. 1, 2.

UNEQUAL DISTRIBUTION OF ANCESTRAL PROPERTY - - - vii. 18
See HINDU LAW. 36.

UNDER-TENURES HELD UNDER CONTRACT
See OUDH LAW. 32. [v. 225

URAIMA RIGHT - - - - iv. 76
See RELIGIOUS ENDOWMENTS. 4.

URALLERS - - - - - iv. 76
See RELIGIOUS ENDOWMENTS. 4.

USAGE AS TO BOUNDARY LINE - vi. 211
See ACCRETION. 2.

USER OF A PASSAGE - - - xiii. 77
See EASEMENT. 1.

USER OF HOUSE AS RESIDENCE - i. 387
See WILLS. 4.

USUFRUCTUARY MORTGAGE - - ii. 241
See MORTGAGE. 1.

USURY LAWS - - - - vii. 51
See MORTGAGEE. 8.

VAKEEL - - - - - - vii. 6
See LEGAL PRACTITIONERS. 4.

VALUATION OF SUIT - - - i. 84
See PRACTICE. 23.

VALUATION UNDER STAMP ACT - i. 317
See PRACTICE. 2.

VALUE OF GOODS LESS COST OF CARRIAGE
See DAMAGES. 1. [v. 130

VERBAL AUTHORITY TO DESTROY WILL
See HINDU LAW. 109. [iv. 228

VERIFICATION OF PLAINT - - xx. 139
See PLAINT.

VESTING - - - - - - xii. 91
See MAHOMEDAN LAW. 5.

VESTING OF ESTATE - - Supp. 237
See OUDH LAW. 8.

VICE-ADMIRALTY COURTS, APPEALS FROM
See PRACTICE. 49. [viii. 159

VOID CONDITION - - - - xi. 44
See GIFT.

VOID ESTATES OF INHERITANCE
[x. 51; xvi. 29
See HINDU LAW. 111, 115.

VOID INCONSISTENT CONDITIONS - vi. 182
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VOID LIFE ESTATE - - - xi. 1
See OUDH LAW. 24.

VOID RESTRICTIONS - - - xv. 37
See HINDU LAW. 113.

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See INSOLVENCY. 1.

WAIVER OF OBJECTION BY JUDGMENT DEBTOR - - - iii. 230
See EXECUTION SALES. 2.

WAIVER OF PLEA TO JURISDICTION xiv. 160
See HIGH COURT. 4.

WAIVER OF RIGHTS ON CO-SHARER'S DISQUALIFICATION - - xviii. 9
See HINDU LAW. 82

WAJIB-UL-ARZ.] A wajib-ul-arz ought not to be entered on the record as a mere expression of the views of the proprietor of an estate; it should be entered as an official record of local customs. UMAN PARSHAD *v.* GANDARP SINGH - xiv. 127

2. —— *Construction—Pre-emption, Right of.*] *Held*, that the following clause in a wajib-ul-arz: "Each sharer is by all means at liberty to transfer his right and share, but first of all the transfer should be effected by him in favour of his own brothers and nephews who may be sharers, and, in case of their refusal, in favour of other owners of the thoke," did not, according to its true construction, confer a right of pre-emption in the Defendant's thoke on the Plaintiff who was the owner of another thoke, but in no way interested in the Defendant's thoke. MUSSAMUT LACHHO *v.* MAYA RAM - - - - - x. 1

3. —— *Wajibularz — Indian Evidence Act, 1872, ss. 35, 48—Wajibularz in Oudh.*] Wajibularz or village papers made in pursuance of Reg. VII. of 1822, regularly entered and kept in the Office of the Collector, and authenticated by the signatures of the officers who made them, are admissible in evidence under the *Indian Evidence Act*, 1872, s. 35, in order to prove a family custom of inheritance stated therein; or under sect. 48, as the record of opinions as to the existence of such custom by persons likely to know of it. Such records are not invalidated in *Oudh*, because made and kept by the settlement officer or by officers subordinate to him; and not by the collector as required by the Regulation. RANI LEKRAJ KUAR *v.* BABOO MAHPAL SINGH. RANI RUGHUBUNS KUAR *v.* BABOO MAHPAL SINGH [vii. 63

WAKF - - - - - - xx. 99
See TRESPASSERS. 2.

WAKF IN FAVOUR OF HEIRS INVALID
[xix. 170
See MAHOMEDAN LAW. 24.

WAKF PROVIDING FOR GRANTOR'S FAMILY
See MAHOMEDAN LAW. 23. [xvii. 28

WATERCOURSE - - - vii. 240
See LIMITATION. 22.

WIDOW.
See HINDU LAW. 85—104.

WIDOW OF DECEASED TALOOKDAR - ix. 41
See OUDH LAW. 14.

WIDOW'S AUTHORITY TO PERFORM CEREMONIES OF ADOPTION - iii. 253
See HINDU LAW. 8.

WILLS—*Construction—Tamlik—Act I. of 1869, s. 2*] Case in which it was held that an instrument which had been executed by an *Oudh* talookdar (reserving a life interest) for the purpose of effecting after his death a transfer of property to the Respondent must, having regard to its substantial characteristics, to its answering the definition of a will contained in sect. 2, Act I. of 1869, and to its having been registered as a will, and setting aside mere technical expressions, such as "tamlik," be regarded as a will and not as a transfer operating *inter vivos*. THAKUR ISRI SINGH *v.* BALDEO SINGH - - - xi. 135

2. —— *Construction — Life Interest — Remainder—Acceleration.*] *Held*, that, by the true construction of the will, a gift in remainder expectant upon the termination of a life estate is accelerated and not destroyed by reason of the gift of the life estate being void.—*Lainson* v. *Lainson* (5 De G. M. & G. 754) approved. AJUDHIA BUKSH *v.* MUSSAMUT RUKMIN KUAR - xi. 1

3. —— *Construction—Residuary Bequest to Charity—Cy-près Doctrine—Charitable Bequest.*] *C. B.*, a Frenchman, by an English will, dated the 1st of January, 1801, bequeathed his property, valued by himself at upwards of 30 lacs, partly to individual legatees, more largely to various charitable objects, the most prominent being certain establishments in *Lucknow*, *Calcutta*, and

WILLS—*continued*

Lyons. His estate was administered and various questions under his will disposed of in several suits instituted for those purposes in the Supreme Court at *Calcutta*. Among the charitable bequests were the three following legacies: 1, by the 28th clause the annual sums of Rs.5000 and Rs.1000, to be applied respectively to the discharge and relief of poor debtors detained in prison in *Calcutta*; 2, by the 25th clause the annual sum of Rs.4000 to be paid to the magistrates of *Lyons* to liberate poor prisoners detained for debt in *Lyons*. This fund was, before 1832, fully paid over to the Mayor and Commonalty of *Lyons*. 3. By the 33rd clause the annual sum of Rs.4000, to be paid to liberate poor prisoners at *Lucknow*, but with a direction that "if none, that sum is to remain to the estate." This gift was, by a decree of the Supreme Court in 1832, declared to be void, and the residuary estate was increased by the amount which would have been required to satisfy it.

A scheme was settled in 1802 for the administration of the charities for the release and relief of poor prisoners at *Calcutta* comprised in the first-mentioned legacy, and funds to satisfy the same were, by orders of the Supreme Court, transferred to the credit of two separate accounts for those several purposes. The income of these funds in excess of what was required for poor prisoners at *Calcutta* accumulated; and in August, 1865, had amounted to Rs.351,000. The residuary clause of the will (the 33rd) directed that "after the several payments of gift and others, as also the several establishments, if a surplus of ten lacs remains, that above surplus is to be divided in such a manner as to increase the three establishments."

On a petition by the Advocate-General, without citing the Appellant, the High Court, on the 3rd of August, 1865, made an order (confirmed by another order of the 2nd of March, 1866), under which a sum of Rs.150,000 was reserved in an account for the relief and release of poor prisoners at *Calcutta* as above, the income to be applied on the *cy-près* principle "in lieu and supersession of the former scheme;" and the residue of the said accumulation was divided between the *Calcutta* and *Lucknow Martinière* establishments.

On a petition by the Appellant to the High Court, dated the 21st of June, 1873, praying that it might be declared that the said gifts of Rs.5000 and Rs.1000 annually for the release and relief of prisoners in *Calcutta* had failed; that the said accumulations formed part of the residue of the testator's estate; and that the Petitioner, as a residuary legatee, was entitled to a share thereof: the High Court refused the petition, holding "that the said charitable gift was an absolute charitable gift capable of being applied *cy-près*; and that the Petitioner, as one of the residuary legatees under the will, was not entitled to any of the funds appropriated to that gift":—

Held, by their Lordships, that this order must be affirmed.—It cannot be laid down as a general principle that the *cy-près* doctrine is invariably displaced when the residuary bequest is to charity.—The jurisdiction of the Court to act on the *cy-près* doctrine upon the failure of a specific

WILLS—*continued*.

charitable bequest arises whether the residue be given to charity or not, unless upon the construction of the will a direction can be implied that the bequest, if it fails, should go to the residue.—Such a direction cannot be implied from the terms of the above legacies to poor prisoners in *Calcutta* and *Lyons*, especially when compared with the corresponding gift to the prisoners at *Lucknow*, nor can it be inferred from the residuary clause, which in terms disposes of such residue as is left after providing for the said legacies. MAYOR OF LYONS *v.* ADVOCATE-GENERAL OF BENGAL - - - iii. 32

4. —— *Devise on Condition of Residence—User of House as Residence—Construction.*] Where a devise is to determine on the devisee ceasing to use a certain house as his residence, and no manner or period of residence is prescribed, exclusive residence is not supposed to be meant; the occasional use of the house and keeping an establishment in it with the intention of again using it as a residence is a sufficient compliance with the condition.—Question raised as to what is a sufficient compliance with the condition of using a Boitokanah house as a residence.—The condition as to cesser does not arise in consequence of the devisee not using the house in any sense as his residence for four years after the testator's death, where the delay can be justified by the pendency of a suit brought to defeat his title, and by his inability to obtain possession of the whole of the house from trustees, and by the unfit state of the house for residence owing to the want of repairs, which were in progress. TAGORE *v.* TAGORE - - - - i. 387

5. —— *Precatory Trusts—Construction.*] A testator gave to his widow the whole of his real and personal property "feeling confident that she will act justly to our children in dividing the same when no longer required by her:"—*Held*, that the widow took an absolute interest, and that the doctrine of precatory trust did not apply.—The petition of special leave to appeal in this case stated correctly two valid grounds for granting the same; but contained misstatements of fact which affected the third ground relied upon by the petitioner:—*Held*, that any such petition is liable at any time to be rescinded with costs if it contains any misstatement or any concealment of facts which ought to be disclosed. It appearing however that there was in this case no intention to mislead, the appeal was heard and allowed, but without costs.—*Ram Sabuk Bose* v. *Monomohini Dossee* (Law Rep. 2 Ind. Ap. 81) approved. MUSSORIE BANK *v.* RAYNOR ix. 70

6. —— *Probate—Evidence.*] *Held*, on the evidence, that the will in this case was duly proved; and, *quære* whether a creditor of one of the testator's heirs who has attached a portion of the testator's estate in respect of his debtor's right, title, and interest therein can oppose the grant of probate or apply to have it revoked, at least in a case which is not founded on the ground that the probate has been obtained in fraud of creditors. RAJAH NILMONI SINGH DEO BAHADOOR *v.* UMANATH MOOKERJEE AND OTHERS, AND RAJAH NILMONI SINGH DEO BAHADOOR *v.* BHOYHARINI DEBIA - - - - x. 80

WILLS —*continued.*

7. —— *Probate—Evidence.*] Case in which it was held (overruling a judgment of the High Court) that probate of a will propounded by the Appellant ought not to have been refused, and in which the evidence was held not to warrant the conclusions drawn by that Court as to the testator's mental and physical incapacity to execute the same. BAMA SOONDARI DEBI *v.* TARA SOONDARI DEBI - - - xviii. 132

8. —— *Revocation of Will—Demonstrative Legacies.*] A duly-executed will is not to be treated as revoked, either wholly or partially, by a will which is not forthcoming, unless it is proved that the later will contained a revocation expressed or necessarily implied, the burden of proof to that effect being on the person who challenges the earlier will.—Payment of certain legacies being resisted on the ground that the testatrix had no disposing power over the fund out of which she directed them to be paid: —*Held*, that, on a consideration of the whole will, the clause in question could not be restricted to such fund, but extended to the whole moveable estate of the testatrix. Otherwise the legacies were demonstrative, and on failure of the particular fund named were payable out of the general estate. NAWAB SAHIB MIRZA *v.* MUSSAMMAT UMDA KHANAM - - - xix. 83

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See HINDU LAW. 36, 105—116.
MAHOMEDAN LAW. 20—22.
OUDH LAW. 10, 17, 20—23

WORDS:—

—— "Always and for ever" - - xii. 159
See MAHOMEDAN LAW. 22.

—— "Ba farzandan" - - - xii. 205
See POTTAHS. 6.

—— "Donee his children and grandchildren"
See HINDU LAW. 27. [v. 138

—— "During the term of the mokurruri"
See POTTAHS. 1. [iv. 223

—— "From generation to generation" - xiv. 7
See DEEDS. 3.

WORDS—*continued.*

—— "If my son dies" - - - xvi. 166
See HINDU LAW. 116.

—— "Immoveable estate" - - i. 34
See LIMITATION. 1.

—— "Indefinite words of gift when limited"
See HINDU LAW. 30. [xi. 218

—— "Issue and heirs used convertibly"
See DEEDS. 4. [xvi. 175

—— "Istimrari mokurrari" - - xii. 205
See POTTAHS 6.

—— "Maharani Sahiba" - - xv. 127
See OUDH LAW. 22.

—— "Mokurruri" - - - ix. 33
See POTTAHS. 3.

—— "Naslan bad naslan" - xii. 205; xiv. 7
See DEEDS. 3
POTTAHS. 6.

—— "Rest of your family" - - xx. 9
See DEEDS. 6.

—— "Santân sreni kramé" - - v. 138
See HINDU LAW. 27.

—— "Substantial persons" - - ii. 71
See SALES FOR ARREARS OF REVENUE. 6.

WRITTEN DOCUMENTS - - - vii. 8
See EVIDENCE. 1.

WRONGFUL ATTACHMENT - - xvii. 17
See EXECUTION SALES. 12.

WRONGFUL POSSESSION - - xx. 160
See TRESPASSERS. 1.

ZEMINDAR - - - - i. 364
See DAMAGES. 3.

—— - - - - - xvii. 62
See DECREE. 1.
See also Cases under ACCRETION, ENHANCEMENT, and GHATWALI TENURES.

—— - - - - - - i. 282
See POLLIEMS. 2.

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